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GLOBAL TAX WEEKLY
a closer look

ISSUE 297 | JULY 19, 2018

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GLOBAL TAX WEEKLY
a closer look

Global Tax Weekly – A Closer Look

Combining expert industry thought leadership and the unrivalled worldwide multi-lingual research capabilities of leading law and tax publisher Wolters Kluwer, CCH publishes Global Tax Weekly — A Closer Look (GTW) as an indispensable up-to-the minute guide to today's shifting tax landscape for all tax practitioners and international finance executives.

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International Aspects Of US Estate Planning – Part II: Techniques And General Filing Requirements

by Stephen Flott, Joseph Siegmann, Brittany Oravec and Amy Hmood, Flott & Co.

This is the second in a series of articles on the international aspects of US estate planning for US citizens, US residents, and non-resident aliens owning US situs property. The second article provides an overview of estate planning methods and related tax consequences.[1]

Estate Planning Techniques

There are generally four tools used in estate planning: wills, trusts, powers of attorney, and living wills or advanced medical directives. The purposes of these different tools are to ensure a person's medical wishes are respected if he is incapacitated and to maintain his personal and financial well-being prior to his death. Another purpose is to provide for the orderly and systematic transfer of wealth to a person's heirs and other beneficiaries.

Wills

A will is a legal document naming one or more administrators of an estate, containing instructions for distributions of the decedent's property, and requesting the appointment of a specific person or persons to act as the guardian of the decedent's minor or incapacitated children. The will controls the distribution of assets titled in the decedent's name or otherwise owned by the decedent at his death. Probate is the process by which the administrator distributes the decedent's assets to beneficiaries named in the will. Bank accounts, security accounts, and real estate titled solely in the decedent's name are examples of assets that are probated. The administration process of probate depends on the legal system of the country with jurisdiction over the estate.[2] There are two major legal systems in the world: common law and civil law.[3]

Common law jurisdictions typically administer an estate through probate. Probate is the legal process of resolving claims surrounding a decedent's estate and distributing property according to the decedent's will.[4] Probate involves several steps, which are discussed in detail below. Civil law jurisdictions on the other hand usually do not have a probate and administration process; rather, the property owned by the estate is automatically transferred to the beneficiaries.

Determining which country has jurisdiction over a decedent's estate may be complicated, especially for decedents with property and assets in multiple jurisdictions. Generally, the country in which the decedent was domiciled at the time of his death retains jurisdiction over all of the property of the estate. While similar, domicile is distinguishable from residence. Domicile is acquired by living in a jurisdiction with the present intention to remain in such jurisdiction indefinitely. Residence is the location where an individual lives for a sufficient amount of time to meet the jurisdiction's residency requirement (such as living in the United States for at least 183 days in the current year).[5] An individual may have multiple residences at any given time, but only ever one domicile.[6] Citizenship is not a factor in determining a decedent's domicile.

The probate process varies depending on the country or even local jurisdiction within a country. Initially, a court must determine whether there is a valid will that was executed properly under the rules of the local jurisdiction which governs the disposition of his assets. If there is a valid will, the courts oversee the process of settling the decedent's estate. There are a number of items the court must address before distributing the decedent's assets.

The court supervises the administrator and rules on the legitimacy of creditor claims against the estate. The court must also settle any contests to the validity of the will. Wills are often contested by family members or beneficiaries who did not receive either the property or the amount they anticipated from the will. There are four common legal grounds for contesting a will. The first is that the will was not properly executed according to the applicable jurisdiction's laws. For example, there may have been an insufficient number of witnesses. The second claims the testator lacked testamentary capacity to sign a will.[7] The third claims the testator was unduly influenced into signing a will. This occurs when an individual exerts extreme pressure or duress on the testator, causing the testator to lose autonomy and unwillingly comply with the desire of the influencing individual. Finally, the fourth claims the will was procured by fraud. This occurs when the testator is tricked into signing a document he did not know was a will.

In addition, the court also oversees a guardian's use of property left to minor children and the transfer of the decedent's remaining property to the beneficiaries named in the will. However, before assets may be distributed to the beneficiaries, the probate-related fees must first be paid. These fees include executor's fees, legal fees, filing fees, appraisal fees, publication fees, bond fees, and unexpected legal costs for will contests, disputes, and real estate transactions. Additionally, as mentioned in the first article of this series, the estate may be subject to federal and/or state estate tax, depending on the size of the estate and location of the assets. Also depending on the location of the assets, the estate may be subject to estate tax imposed by foreign governments in addition to that imposed by the United States. These total costs vary widely among different jurisdictions, but usually fall between 3 percent and 8 percent of an estate's gross value, plus any estate tax owed.[8]

Court supervision of the probate process ensures that a decedent's property is distributed consistently with the terms of his will. Depending on the jurisdiction, the probate process may take as little as six months or as long as several years.[9] The probation of an estate with property in multiple jurisdictions may take significantly longer to complete, delaying distributions to beneficiaries.

In civil law jurisdictions, wills are utilized less often because of forced heirship laws requiring a portion of a decedent's estate pass to certain relatives, disposing of the majority of the estate. The assets of an estate governed by civil law vest automatically in the heirs. In effect, there may not be an estate, since the property automatically transfers to the beneficiaries. The exact process of asset transfers varies greatly from jurisdiction to jurisdiction. Generally, civil law courts are less involved in the process than common law courts, unless a will exists and an heir challenges it. In some jurisdictions, the courts issue a certificate naming the heirs and their respective shares, but in other countries the process is completed outside of court.[10]

Trusts

As mentioned earlier, wills only control the distribution of probate assets, or assets titled in one's individual name that do not name a beneficiary. Non-probate assets on the other hand, as described in the first article in this series,[11] are assets passing directly from the decedent to the beneficiary such that a court does not oversee the transfer of property to the beneficiary. These non-probate assets may also be referred to as "will substitutes" because their terms control their disposition, not the will. While a decedent's estate, subject to estate law in multiple jurisdictions, may pass its assets through probate, doing so may be complicated and time consuming. It is often simpler and faster to transfer assets outside of probate. In order to do so for assets subject to probate, the most convenient method is the trust.

A trust is a legal arrangement by which a grantor, typically the decedent, transfers assets to a trust. A trustee oversees, manages, and uses the transferred assets for the benefit of the trust's beneficiaries. Depending on the nature of the trust, property transferred to the trust may be excluded from the decedent's estate. Trusts are frequently used to avoid probate, provide asset protection, and minimize tax liability. There are two main trust categories: testamentary trusts and living trusts. Testamentary trusts are created by a decedent's will and are formed and funded upon the decedent's death. Living trusts are created and funded by the decedent during his lifetime.

Beyond these two designations, a trust may also be revocable or irrevocable. A revocable trust is distinguished by the settlor's retention of control over the assets, and the settlor's ability to change the terms or terminate the trust for any reason. An irrevocable trust is distinguished by the settlor's relinquishment of the right to control the management of assets transferred to the trust.

Common types of trusts include marital/qualified terminable interest property (QTIP) trusts, qualified domestic trusts (QDOT), and irrevocable life insurance trusts (ILIT). Each trust provides its own advantages and applications that require a much more detailed explanation than this article permits. These types of trusts, and others, will be analyzed in greater detail in future articles of this series.

Power of attorney

The third common tool used in estate planning is the power of attorney (POA). Wills and trusts govern the disposition of a decedent's assets upon his death, whereas a POA governs items on behalf of the decedent during his lifetime. A POA is a written document authorizing someone to make either financial or healthcare decisions on behalf of another. The person authorizing the POA is the principal, and the person authorized to act on behalf of the principal is the attorney-in-fact or agent.

A financial POA may be either a general or a durable POA. A general POA gives an attorney-in-fact the authority to execute financial transactions in the principal's name. However, a general POA is only valid while the principal is at full capacity, and terminates upon the principal's incapacitation. A durable POA, on the other hand, authorizes the attorney-in-fact to make financial decisions from the time of its execution or another date, until the principal's death. The authority of a durable POA lasts beyond any disability, incompetence, or incapacitation of the principal. Individuals who spend time or have assets outside of the United States should learn the local requirements governing POAs. Many countries do not recognize general POAs or expansive powers granted under a durable POA; instead, many countries require POAs to grant specific powers, such as listing each specific bank account number over which the attorney-in-fact has power.

As mentioned above, a POA is effective from either the time of its execution or another date, as dictated by the language of the POA. If a POA becomes effective upon execution, as long as the principal remains competent the attorney-in-fact may only act on approval of the principal. However, if the POA becomes effective upon a certain date or after the happening of a certain event, it is a springing POA.[12] No matter the type, POAs terminate with the death of the principal. In other words, a POA does not affect the administration of the principal's estate after his death.

The purpose of POAs is to benefit the principal. For example, a durable POA may allow the principal to avoid the costly and complicated conservatorship process which may otherwise be required if the principal becomes incapacitated. It may also reduce difficulties with managing one's affairs during a pending conservatorship. To fully benefit from the POA, the principal should provide his attorney-in-fact with sufficient ability to carry out all routine financial transactions that may be required. This will avoid the possibility of an issue arising with the principal's finances that his attorney-in-fact does not have the authorization to solve.

While there are benefits, principals should exercise caution when selecting an attorney-in-fact because an attorney-in-fact gains tremendous power over the principal's assets and may abuse this power for his own financial gain. While there is potential for abuse, an attorney-in-fact is a fiduciary, which means the attorney-in-fact may be held legally liable for acting outside the scope of his duties. While the risk of abuse is present, this fiduciary care requirement tempers this risk.

As mentioned above, a healthcare POA is also available as an estate planning tool. This grants a healthcare agent the ability to dictate the medical care of the principal during his lifetime, in the event he becomes incapacitated. The principal has the ability to memorialize his healthcare decisions in a healthcare POA, such that if he becomes incapacitated the healthcare agent may rely on that POA to act as the principal would if the principal had the capacity to make his own decisions. Slightly different from the financial POA, a healthcare agent's authority is only valid when the principal is temporarily or permanently incapacitated. The healthcare agent's authority under a healthcare POA terminates upon the principal's recovery from incapacitation, or upon his death.

Living wills or advance medical directives

The fourth and final common tool in estate planning is a living will, or advance medical directive (AMD). An AMD is generally incorporated directly into the healthcare POA or is a separate, stand-alone document, depending on the jurisdiction.[13] An AMD gives the principal an opportunity to dictate his end-of-life medical treatment preferences and grants an agent the authority to make these end-of-life treatment decisions on his behalf. The AMD is written for the agent to rely upon when making these treatment decisions for the principal, such that the principal's wishes may be followed. Similar to the healthcare POA, the agent has the authority to make these treatment decisions only when the principal is incapacitated or cannot otherwise make the decisions on his own. The agent's authority under an AMD terminates upon the principal's recovery from incapacitation, or upon his death. The AMD is beneficial in that it preserves the principal's control over end-of-life medical treatment and eases the decision-making burden on the principal's family/agent.

US Tax Filing Obligations Arising From Estate Planning And Asset Transfers

Estate planning focuses on how, when, and to whom an individual's assets will transfer to his beneficiaries, whether it is during his life or upon his death. A transfer tax is a tax imposed when property passes from one person to another. A taxable transfer may occur when, for example, property is gifted, inherited, or placed in a trust. Some transfers, while not taxable due to their size, might require reporting to the Internal Revenue Service (IRS). All transferors and transferees must be aware of the transfer tax consequences and reporting requirements of any estate plan they execute. This section focuses on the three primary US transfer taxes relevant in the estate planning process: the gift tax, the generation-skipping transfer tax, and the estate tax.

While there are three different taxes, they are interrelated. There is a unified lifetime exemption amount for gifts made by a person during their lifetime and for bequeaths at death. In effect, a gift in excess of the annual exclusion amount, described below, reduces the grantor's unified lifetime exemption amount for future gifts during life and bequests.

Gift tax

The gift tax is imposed by the US on gifts made by US citizens, US residents, and nonresident aliens (NRAs), if the NRA gifts US situs property.[14] A gift is a transfer of money or other assets by the transferor for less than full and adequate consideration.[15] Direct gifts such as the outright transfer of cash, jewelry, stocks and bonds, deeds of property, or car titles are easy to identify. However, there are many ways that an individual makes indirect gifts which a transferor may not automatically think of as a gift. For example, transfers in trust, discharge of indebtedness, loans made at a below market interest rate, transfers for less than fair market value consideration, creation or severance of joint interests, and transfers of life insurance policies to another may all be gifts.

All types of gifts, be they direct or indirect, are subject to the gift tax regime. However, there are exemptions which decrease or exclude the gift amount subject to the gift tax. For example, gifts made to a US citizen spouse benefit from an unlimited exemption, so that no such gift is subject to the gift tax regime and such gifts do not have to be reported.[16] Also, gifts made to any person other than a US citizen spouse benefit from a USD15,000 exemption in 2018, such that any gift below this amount is excluded from gift tax and reporting.[17] An unlimited exemption also applies to medical expenses paid directly to a medical provider on behalf of another, and to tuition expenses paid directly to a school on behalf of another.[18] Additionally, reasonable support obligations, such as providing food and shelter to a spouse, child, or dependent, are not gifts.[19]

In addition to the specific exemption amounts that apply to certain types of gifts, there is also a unified lifetime exemption that applies to all gifts made by US persons. Each US citizen and resident can gift up to USD11.18m tax-free over the course of his lifetime; this is the lifetime exemption.[20] This applies in addition to the previously mentioned specific exemption amounts, such that if a gift is given to a recipient other than a US citizen spouse, and the gift exceeded USD15,000 in a single calendar year, the excess gifted over USD15,000 is deducted from the lifetime exemption of USD11.18m. Additionally, the US person must report gifts exceeding USD15,000 to the IRS on a Form 709 on an annual basis.

NRAs do not benefit from the USD11.18m exemption; however, NRAs do receive the same annual exclusion. Any gift of real or tangible personal situs property in the United States made by an NRA to a person other than a US citizen spouse is tax-free if it is USD15,000 or less. Any gift in excess of USD15,000 is therefore subject to US gift tax.

As previously mentioned, an NRA may gift an unlimited amount of US situs property to his US citizen spouse without triggering the gift tax. If his spouse is not a US citizen, the NRA may only gift USD152,000 of US situs property to his spouse per year before having to file Form 709 and pay gift tax.[21] US citizens and residents are also only permitted to gift USD152,000 per year to NRA spouses before having to file Form 709. However, US citizens and residents will likely not be subject to gift tax as any gifts made to NRA spouses above USD152,000 merely reduce their lifetime exemptions of USD11.18m.

Transferors required to file Form 709 with the IRS must do so on or before April 15 following the taxable year in which the taxable gift was made. The transferor may request an extension of time for filing a gift tax return; however, except in the case of taxpayers abroad, no extension will exceed six months. An extension of time for filing does not extend the time for payment; if gift tax is due, it must be paid by April 15.

Generation skipping transfer tax

The generation skipping transfer tax (GSTT) applies when an individual gives money or property to either: (1) a related individual more than one generation separated from the donor; or (2) an unrelated individual at least 37.5 years younger than the donor.[22] An example of such a transfer is a grandfather gifting money directly to his grandchild. The GSTT applies regardless of whether the transfer was made during the donor's life, at the donor's death, or via a trust.

Similar to the gift tax, certain exemptions to the GSTT apply. First, the GSTT lifetime exemption is the same as the gift tax lifetime exemption: USD11.18m.[23] Second, there is a USD15,000 annual exclusion from the GSTT, allowing donors to give USD15,000 per person per year without incurring the GSTT or reducing the donor's GSTT lifetime exemption. Any amount gifted above this USD15,000 serves to reduce the lifetime exemption, and must be reported to the IRS on Form 709, following the same procedures discussed for the gift tax in the previous section.

Regarding the GSTT, NRAs face essentially the same rules as US citizens and residents, though only US situs property transfers are subject to the GSTT. NRAs are entitled to the same USD11.18m lifetime exclusion as US citizens and residents.[24] NRAs also have the same annual exclusion as US citizens and residents. This allows an NRA to make transfers of USD15,000 per recipient per year without incurring the GSTT or using his GSTT lifetime exemption.

Estate tax

The federal estate tax is imposed on the gross value of a decedent's estate at the time of his death.[25] Every US citizen and resident has an applicable exemption which is identical to the gift tax exemption, USD11.18m in 2018. If an estate is worth less than the decedent's remaining exemption, it will not be subject to estate tax. The estate tax exemption amount is unified with the gift tax lifetime exemption, such that the total allowed for gift tax exemption during life and estate tax exemption upon death is USD11.18m. Thus, any reduction of this unified exemption for purposes of the gift tax during life will reduce the unified exemption available for purposes of the estate tax upon death.

As previously explained, NRAs do not benefit from a unified lifetime exemption for purposes of either the gift tax or the estate tax. Instead, NRAs have an estate tax exemption amount of USD60,000 for US situs assets that comprise their US estate. This exemption amount applies when the US situs estate is left to any individual, except for a US citizen spouse.

Similar to the gift tax, transfers of property to the decedent's US citizen spouse have an unlimited marital deduction for purposes of the estate tax. An individual can bequeath as much property as he wishes to his surviving US citizen spouse and the estate will owe no tax on the transfer. Estate transfers to a non-US citizen spouse by a US citizen or resident are not eligible for the unlimited marital deduction, but the unified exemption still applies. As will be discussed in a later article in this series, there are planning techniques to allow for the deferral of tax in these situations, such as a QDOT.

For purposes of the estate tax, there are two relevant IRS forms the executor of the estate may need to file: Form 706 and Form 1041. Form 706 is an estate tax return. For decedents who were US citizens or residents, the executor files the estate tax return if the gross estate exceeds the decedent's remaining unified exemption amount.[26] For NRA decedents, the executor must file an estate tax return if the value of the US situs gross estate exceeds USD60,000.[27] The estate tax return ordinarily must be filed within nine months after the decedent's death; however, the executor may request an extension of time for filing. Except in the case of executors living abroad, no extension will be for more than six months. Although an extension of time to file may be granted, this does not extend the time for payment.

Form 1041 is the income tax return for estates and trusts. Generally, two groups are required to file this form. First, the executor of a domestic estate must file Form 1041 if the estate has gross income of USD600 or more for the tax year, or has a beneficiary who is an NRA.[28] Second, the trustee of a domestic trust must file Form 1041 if the trust has any taxable income for the tax year, gross income of USD600 or more, or a beneficiary who is an NRA.[29] However, a fiduciary of a foreign trust or estate which derives US source income must file Form 1040NR instead of Form 1041.

For calendar year estates and trusts, the return is ordinarily due on April 15 of the following year. For fiscal year estates and trusts, the deadline is the 15th day of the fourth month following the close of the tax year. The trust or estate may receive a five and a half month filing extension if requested using Form 7004. However, as previously stated, this extension of time to file does not extend the time to pay any tax due.

Conclusion

This article explains how wills, trusts, powers of attorney, and advance medical directives are important estate planning tools, and describes the filing requirements and tax consequences of transferring property to beneficiaries. An important takeaway is that while there is a way to handle each individual's estate planning situation, there are a variety of factors to be considered when creating an effective, individualized estate plan. These factors include the descendant's desires, transfer taxes, exemption amounts, jurisdictional differences, and citizenship. Thanks to the number of compliance requirements, it is important to consult a competent international estate planner before commencing or finalizing your estate plan.

Subsequent articles in this series will discuss in more detail international considerations for persons looking to estate plan, and specific consequences for US citizens living in the United States and abroad, Permanent Residents of the United States, and Non-Resident Aliens of the United States.

Endnotes

1 This article does not constitute legal advice. It contains general information about the US gift and estate tax system. Please consult a qualified US estate planning professional to assist with your estate planning. All references in this article to the "IRC" refer to the Internal Revenue Code, located in Title 26 of the United States Code.

2 Jurisdiction is "[t]he power and authority constitutionally conferred upon … a court or judge to pronounce the sentence of the law … in favor or against persons … who present themselves, or who are brought, before the court in some manner sanctioned by law as proper and sufficient." *Jurisdiction, Black's Law Dictionary* (2nd ed., 1910).

3 In a common law system, law is developed through specific cases and written judicial opinions. In a civil law system, the law is developed through statutes, and judicial opinions have far less influence. Examples of common law jurisdictions include the United States, the United Kingdom, and Hong Kong. Civil law is much more common. Most European, Latin American, and African countries use civil law.

4 If the decedent did not have a will then the local intestacy rules are followed, in lieu of probate.

5 IRC § 937.

6 *See Cathey v. Bd. of Review, Dep't of Health & Mental Hygiene*, 422 Md. 597, 610 (2011).

7 Testamentary capacity is the mental state the testator is required to possess for a will to be considered valid; it is the idea that the testator was aware of the nature and extent of his property. *See In re Estate of Schafer*, 8 Wash. 2d 517, 520 (1941).

8 *See* Julie Garber, *How Much Does Probate Cost?*, The Balance (last updated April 17, 2018), https://www.thebalance.com/how-much-does-probate-cost-3505268

9 *See* Gordon Mead Bennett, *How to Avoid Probate by Creating a Living Trust: A Simple Yet Complete Guide*, 22 (2007); Gail J. Koff, *The New Jacoby and Meyers Practical Guide to Everyday Law*, 245 (1994).

[10] *See* Maryse Naudin, *2018-1 GTDT: Private Client France*, 1 Private Client 2018; Andreas Richter & Katharina Hemmen, *2018-1 GTDT: Private Client Germany*, 1 Private Client 2018.

[11] *See Global Tax Weekly*, No. 292, June 14, 2018.

[12] For example, a springing POA might take effect on the principal's 75th birthday, or if the principal becomes mentally incapacitated.

[13] The majority of US states have a specific statute authorizing AMDs, but certain states do not have such a statute. For example, Maryland currently has legislation permitting AMDs as part of its 2015 Health Care Decisions Act. *See* Md. Code Ann., Health–Gen. §§ 5-601 to 5-618. Michigan on the other hand has no state law on the topic.

[14] *See generally* IRC §§ 2501-2524.

[15] *See* IRC § 2512(b).

[16] *See* IRC § 2523.

[17] For 2018, the annual gift tax exclusion is USD15,000. That means a donor may give USD15,000 per year per donee without thinking about the gift tax or filing any forms with the IRS. IRS Revenue Procedure 2017-58, Section 3.37.

[18] 26 CFR § 25.2503-6.

[19] Gen. Couns. Mem. 38,702 (April 28, 1981).

[20] *See* IRC §2010(c)(3)(C); Tax Cuts and Jobs Act 2017, §11061(a).

[21] *See* 26 CFR 25.2503-2(f).

[22] *See generally* IRC §§ 2601-2664.

[23] *See* IRC § 2631.

[24] *Id.*

[25] *See generally* IRC §§ 2001-2209.

[26] *See Instructions for Form 706*, IRS (last updated September 11, 2017), https://www.irs.gov/instructions/i706

[27] *Some Nonresidents with U.S. Assets Must File Estate Tax Returns*, IRS (last updated Jan. 25, 2018), https://www.irs.gov/individuals/international-taxpayers/some-nonresidents-with-us-assets-must-file-estate-tax-returns

[28] *See* 26 CFR § 1.6012-3.

[29] *Id.*

FATCA – A Progress Report

by Stuart Gray, Senior Editor, Global Tax Weekly

The United States Foreign Account Tax Compliance Act is now an established feature of the international tax compliance landscape. However, FATCA remains controversial, and there continues to be much debate over whether the legislation will be worth the resources spent by the US Internal Revenue Service and the global financial services industry on its implementation. Recent findings by the United States Treasury watchdog, the Treasury Inspector General for Tax Administration (TIGTA) revealing that the IRS has struggled to enforce, and financial institutions have faced difficulties complying with, FATCA, may lead to further discussions about the value of FATCA to US taxpayers.

This article takes a brief looks at FATCA and its roll-out, TIGTA's latest investigation into the enforcement of FATCA, and considers whether the law is fighting for space in an area of tax compliance that is already crowded with other US legal measures and initiatives, including FBAR and the OVDP.

FATCA Summary

FATCA, which was enacted as part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010,[1] is designed to tackle the non-disclosure by US citizens of taxable income and assets held in foreign accounts. The law is intended to ensure that the US obtains information on accounts held abroad at foreign financial institutions (FFIs) by US persons. Failure by an FFI to disclose information on their US clients, including account ownership, balances, and amounts moving in and out of the accounts, results in the requirement on US financial institutions to withhold 30 percent tax on US-source income.

In addition, individual taxpayers with specified foreign financial assets that meet a certain dollar threshold are required to report this information to the Internal Revenue Service (IRS).

FFIs register for FATCA purposes using the FATCA Online Registration System, a secure, web-based platform, and must report the following pieces of information:

- Account holder's name
- Account holder's US taxpayer identification number
- Account holder's address
- Account number
- Account balance or value
- For accounts held by recalcitrant/nonconsenting account holders, the aggregate number and balance or value.

To address situations where foreign law would prevent an FFI from complying with the terms of an FFI agreement, the United States Treasury Department has developed three model intergovernmental agreements (IGAs).

- The Model 1 IGA requires FFIs in the foreign jurisdiction to report tax information about US account holders directly to the government, which will in turn relay that information to the IRS.
- The Model 1A IGA is essentially the same, except that the IRS will reciprocate with similar information about account holders from the signatory country with the partner government.
- The Model 2 IGA requires FFIs to report specified information about their US accounts directly to the IRS, to the extent that the account holder consents or such reporting is otherwise legally permitted, and such direct reporting is supplemented by information exchange between governments with respect to non-consenting accounts. FFIs also report to the IRS aggregate information with respect to holders of pre-existing accounts who do not consent to have their account information reported, on the basis of which the IRS may make a "group request" to the partner jurisdiction for more specific information.

IGAs with 113 jurisdictions had been signed, were in force, or had been agreed to in principle as of April 11, 2018.

The first FATCA data exchanges with the IRS with regards to Model 1 IGAs were due to take place by September 30, 2015.

Implementation

In 2015, the Treasury Inspector General for Tax Administration praised the way in which the IRS had gone about implementing FATCA. In its evaluation of the IRS's FATCA roll-out, TIGTA said that the agency "has made a reasonable effort to keep external stakeholders informed on the status and events related to the implementation of the FATCA," and noted that overall, the FATCA Compliance Roadmap "is fairly comprehensive."[2]

Nevertheless, given its scale and scope, unsurprisingly, the implementation of FATCA has been no easy task, either for the private sector or for the IRS itself. That numerous FATCA deadlines have been delayed informs us as much.

For example, FFIs were due to have fulfilled their due diligence and withholding requirements to comply with FATCA by July 1, 2014. But in Notice 2014-33, published on May 19, 2014, the IRS announced that calendar years 2014 and 2015 would be regarded as an enforcement and administration "transitional period" with respect to the implementation and enforcement of FATCA in order to "facilitate an orderly transition." In practice, this meant that the IRS would refrain from "rigorously enforcing" many of FATCA's requirements in those two years.[3]

TIGTA's Latest Findings

TIGTA's latest report on FATCA, released on July 5, 2018, concludes that, despite the enforcement hiatus, the transition to FATCA has been far from orderly, from the perspective of both enforcement of the law and compliance with it.[4]

Notably, the Treasury watchdog said that the IRS had largely failed to carry out the planned compliance activities included in the FATCA Compliance Roadmap. But the situation has been exacerbated because reports filed by FFIs under FATCA often did not include taxpayer identification numbers (TINs), or included invalid TINs. "As a result, the IRS's efforts to match FFI and individual taxpayer data were unsuccessful, which affected the IRS's ability to identify and enforce FATCA requirements for individual taxpayers," TIGTA stated in the report.

The report also highlighted compliance problems with regards to withholding agents under FATCA and found that the IRS only recently initiated action to enforce withholding agent compliance with FATCA following previous comments by TIGTA on the issue.

TIGTA observed that 88 percent of the forms submitted by withholding agents which report a foreign person's US source income subject to withholding (Form 1040-S) did not have valid TINs. In total 62,398 Tax Year 2015 Forms 1042-S included invalid TINs, the report revealed.

TIGTA included six recommendations to improve the enforcement of, and compliance with, FATCA, including that the IRS:

1. Establish follow-up procedures and initiate action to address error notices related to file submissions rejected by the International Compliance Management Model (ICMM);
2. Initiate compliance efforts to address taxpayers who did not file a Form 8938 but who were reported on a Form 8966 filed by an FFI;
3. Add guidance to the Form 8938 instructions to inform taxpayers on how to use the FFI List Search and Download Tool on the IRS's website;
4. Initiate compliance efforts to address and correct missing or invalid TINs on Form 8966 filings by non-IGA FFIs and Model 2 IGA FFIs;
5. Expand compliance efforts to address and correct the invalid TINs on all Form 1042-S filings by non-IGA FFIs and Model 2 IGA FFIs; and
6. Initiate compliance efforts to compare Form 1099 filings with valid TINs to corresponding Form 8938 filings.

The IRS agreed with four of TIGTA's six recommendations. Corrective actions include:

1. Establishing follow-up procedures and initiating action on error notices with the FFIs;
2. Continuing efforts to systemically match Form 8966 and Form 8938 data to identify nonfilers and underreporting related to U.S. holders of foreign accounts and to the FFIs;
3. Informing taxpayers how to obtain global intermediary numbers; and
4. Strengthening overall compliance efforts directed toward improving the accuracy of reporting by Form 1042-S filers.

Nevertheless, despite the IRS's acceptance of most of these recommendations, TIGTA's conclusions may not provide a complete picture of FATCA's effectiveness. It has been pointed out that TIGTA's investigation had a fairly narrow focus, and that the FATCA Compliance Roadmap, the review of which constituted a substantial part of its findings, is not as relevant now as when it was drawn up, due to being superseded by newer compliance and enforcement policies.[5] Therefore, perhaps a more thorough review of FATCA is required before more accurate judgments can be made about the law's impact.

Cost-Benefit Analysis

Interestingly, TIGTA found that the IRS has spent almost USD380m on implementing FATCA, just over half of which has been invested in new data systems. And because of the high percentage of forms submitted with invalid TINs, the IRS cannot identify the recipients of the more than USD717m of US source income, of which just over USD47m was withheld.

The report implies that, in revenue terms, FATCA has been something of a disappointment. It pointed out that at the time the HIRE Act was passed, the Congressional Joint Committee on Taxation estimated that FATCA would generate USD8.7bn over the ten-year period from fiscal year 2010 to FY2020, or USD870m per year. As TIGTA noted, this means that the IRS should have collected approximately USD4.8bn in tax revenues by the end of FY 2016. TIGTA's conclusions therefore suggest that these revenue expectations have been considerably undershot, largely as a result of compliance and enforcement problems, and that the FATCA ledger is considerably in the red, considering the amount spent by the IRS on implementing the law.

The sums spent by FFIs on new data and reporting systems in order to come into compliance with FATCA must also be factored into this equation. And while there are no firm estimates on the amounts spent, these figures appear to be growing with each passing year. One survey concluded that a quarter of financial institutions expect to spend up to USD1m on FATCA compliance in 2015, and, based on this data, it has been said that total compliance costs could be between USD60bn and USD170bn for the finance industry.[6] Whatever the actual figure is, French Bank Societe Generale has said that FATCA, as implemented, "will bring huge implementation and processing costs and effort." An additional regulatory cost of USD20-50 per account "does not seem unrealistic," the bank predicted.[7]

Additional costs associated with FATCA could also be economic in nature. FATCA's more vociferous critics in the United States, which include some members of Congress on the Republican side of the aisle, have repeatedly warned that FATCA will discourage foreign investment in the United States, while overseas, American citizens are finding themselves deprived of even basic financial services due to financial institutions' reluctance to deal with US clients, and in turn face the consequences of potentially falling foul of FATCA.

As the US expatriate representative group Americans Abroad warns: "The FATCA threat of a 30 percent withholding tax and the potential exposure to transfer of personal data is inciting foreigners to divest out of US securities and investments. Some foreign banks throughout the world have already indicated their intention to do so and have advised their institutional and private clients accordingly."[8]

Senator Rand Paul (R - KY), who has campaigned strenuously against FATCA and who introduced FATCA repeal legislation into Congress in April 2017, agrees that the law has "impeded international financial transactions and investment by leading many foreign banks to simply deny services to Americans rather than navigate the burdens and costs of compliance."[9]

However, to what extent, if any, FATCA has influenced investment decisions with regards to the United States is difficult to quantify, as this is another area where evidence is hard to come by. Indeed, it could be said that given the current confidence being shown in US economic prospects, FATCA has in no way put the handbrake on growth, at least not yet.

FATCA – Competing For A Smaller Share Of The Pie?

However, it is arguable that there was no need for FATCA in the first place, given that the US Government had already put several measures in place to both encourage and demand that US taxpayers report their overseas income and assets. These include the Report of Foreign Bank and Financial Accounts (FBAR) rules, the IRS's offshore tax amnesty schemes under the Offshore Voluntary Disclosure Program and its associated activities, and a network of tax information exchange agreements. These measures are summarized below.

Report of Foreign Bank and Financial Accounts (FBAR)

Under these rules, "United States persons" with a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account, exceeding certain thresholds may be require to report the account yearly to the Department of Treasury by electronically filing a Financial Crimes Enforcement Network (FinCEN) 114, Report of Foreign Bank and Financial Accounts (FBAR).

United States persons are required to file an FBAR if: they had a financial interest in or signature authority over at least one financial account located outside of the United States; and the aggregate value of all foreign financial accounts exceeded USD10,000 at any time during the calendar year reported.

"United States persons" include: US citizens; US residents; entities, including but not limited to, corporations, partnerships, or limited liability companies, created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States.

For the purposes of FBAR, a foreign financial account is any financial account located outside the US or an account maintained with a branch of a US bank that is physically located outside of the

US, including securities, brokerage, savings, demand, checking, deposit, time deposit or other accounts maintained with a financial institution.

A financial account also includes a commodity futures or options account, an insurance policy or annuity policy with a cash value, and shares in a mutual fund or similar pooled fund. In addition, a debit card account is a financial account, and a credit card account may be treated as a financial account under certain circumstances.

Offshore Voluntary Disclosure Program (OVDP)

The share of undeclared income held overseas by US taxpayers may have been diminished further by the IRS's various Offshore Voluntary Disclosure Programs.

Since the OVDP's initial launch in 2009, more than 56,000 taxpayers have used one of the programs to comply voluntarily.[10] All told, those taxpayers paid a total of USD11.1bn in back taxes, interest, and penalties. The planned end of the current OVDP also reflects advances in third-party reporting and increased awareness from US taxpayers of their offshore tax and reporting obligations. According to the IRS, the number of taxpayer disclosures under the OVDP peaked in 2011, when about 18,000 people came forward. The number has steadily declined through the years, falling to only 600 disclosures in 2017.

The current OVDP began in 2014 and is a modified version of the OVDP launched in 2012, which followed voluntary programs offered in 2011 and 2009. The programs have enabled US taxpayers to voluntarily resolve past non-compliance related to unreported foreign financial assets and failure to file foreign information returns.

Furthermore, a separate program, the Streamlined Filing Compliance Procedures, for taxpayers who might not have been aware of their filing obligations, has helped about 65,000 additional taxpayers come into compliance. The Streamlined Filing Compliance Procedures will remain in place and available to eligible taxpayers.

The IRS also emphasized that it would continue to use tools besides voluntary disclosure to combat offshore tax avoidance, including taxpayer education, whistleblower leads, civil examination, and criminal prosecution. Since 2009, IRS Criminal Investigation has indicted 1,545 taxpayers on criminal violations related to international activities, which included 671 taxpayers who were indicted on international criminal tax violations.

Agreements

The United States also is party to several bilateral and multilateral agreements which provide channels for the exchange of information for tax and other purposes, as follows:

- Double taxation avoidance treaties: While the primary purpose of these agreements is to prevent the double taxation of the same income by two jurisdictions, most treaties include articles authorizing the exchange of tax-related information between the partner countries. OECD data shows that the US has signed 60 DTATs, of which three are pending. The vast majority of these meet existing internationally-agreed standards for the exchange of information.[11]
- Tax Information Exchange Agreements (TIEAs): The sole purpose of these bilateral agreements is to facilitate the exchange of tax-related information between the partner countries. The US currently has 32 TIEAs in force, and two TIEAs awaiting ratification. Most of these also meet EoI standards.[12]
- Mutual Legal Assistance Treaties (MLATs): These bilateral agreements authorize the exchange of information for the purpose of the enforcement of criminal laws. However, MLATs generally cover criminal non-tax matters and in some instances will cover criminal tax matters.
- Multilateral agreements: Certain multilateral agreements to which the United States is a party also authorize EOI for tax purposes, such as the Hague Convention on the Taking of Evidence, the Convention on Mutual Administrative Assistance in Tax Matters, and the Inter-American Convention on Mutual Assistance in Criminal Matters.
- Tax implementation or coordination agreements: These bilateral agreements allow for exchanges of tax-related information between the United States and its five territories (American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the US Virgin Islands).

Notably, however, the United States has not signed the Multilateral Competent Authority Agreement facilitating automatic exchange of information under the Common Reporting Standard, and therefore does not have any automatic EoI relationships with other jurisdictions under this protocol.

Final Thoughts

Perhaps the only firm conclusion that can be drawn about FATCA is that it is a complex, controversial piece of legislation that has presented huge challenges both for the authorities and the financial services industry with regards to its implementation and enforcement.

Whether FATCA has been effective, or indeed, necessary, are harder questions to answer. Although we know that, according to TIGTA, the IRS has spent in the order of USD380m on implementing FATCA, its spillover costs in terms of the additional compliance burden on the financial services industry, lost business to US clients and reduced investment are more difficult to quantify due to a lack of accurate data. However, the shutting out of US expats from foreign financial services markets has been well-documented.

TIGTA's investigations suggests that the IRS's inability to properly enforce FATCA, combined with the high volume of inaccurate information reports submitted to the agency, has meant that substantial revenues have gone uncollected. This might also mean that once these teething problems and errors are fixed, FATCA will generate substantially more tax revenue for the US Treasury. On the other hand, with numerous other channels already open to the US authorities to enable to collect information on potentially untaxed income held overseas, perhaps FATCA is chasing a diminishing pool of revenue, although it may transpire that FATCA ultimately muscles out these other measures from the cross-border anti-avoidance enforcement framework.

Time, and a more holistic review of FATCA's effectiveness, will likely tell us more. For the foreseeable future however, FATCA will remain a fact of life for both taxpayers with foreign financial interests and the global financial services industry.

Endnotes

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11 http://www.eoi-tax.org/jurisdictions/US#agreements

12 *Id.*

Recent Tax Developments In Cyprus

by Michalis Loizou, Elias Neocleous & Co. LLC

Increased Emphasis On Substance

Recent developments in Cyprus have underlined the need for businesses to have real substance in order to operate there and benefit from Cyprus tax residence. Lack of proper substance may lead to denial of benefits under double tax agreements or EU directives, and may also mean that the company concerned is unable to operate a bank account in Cyprus.

The Central Bank of Cyprus circular on "shell" companies and "letter box" companies

On June 14, the Central Bank of Cyprus issued a circular instructing credit institutions it regulates not to open new bank accounts or continue existing accounts with companies that are regarded as "shell" or "letter box" companies. These guidelines are to be incorporated into the Central Bank's anti-money laundering directive in the near future.

A "shell" or "letter box" company is defined in the circular as an entity which is not publicly traded and which meets any of the following criteria:

- It has no physical presence in its country of domicile apart from a mailing address;
- It has no established economic activity, little to no independent economic value, and no documentary evidence to the contrary;
- It is registered in a jurisdiction where companies are not required to file independently audited financial statements;
- It has a tax residence in a jurisdiction recognized as a tax haven or no tax residence whatsoever.

Physical presence implies having real management located within a country, carried out by individuals possessing the knowledge and experience needed to run the business. The existence of employees is another factor indicating physical presence. While it may be necessary and useful for other reasons, representation by means of nominee services provided by agents such as lawyers or corporate service providers does not constitute physical presence.

The guidelines stipulate that trading companies with no effective place of business and management, and hence no substance, will not be permitted to maintain bank accounts in Cyprus, and that trading companies incorporated in jurisdictions recognized as tax havens will have to become tax resident in a tax jurisdiction in order to continue banking in Cyprus.

These restrictions do not apply to holding companies which own investments in shares, intangible or other assets (including real estate or ships), companies undertaking group financing activities or acting as group treasurer, or companies established to facilitate currency trades, asset transfers or corporate mergers, provided that their beneficial ownership is identifiable and they demonstrate that they are engaged in legitimate business.

Banks may opt to engage in a business relationship with a "shell" company client but will have to be able to justify their decision and record this justification in the client file. They will need to follow a risk-based approach in dealing with such clients. Banks are required to carry out a review of their customers to identify such companies. They must inform the Central Bank of Cyprus by July 31, 2018 of the results of the review and whether they intend to continue their business relationship with the entities concerned.

Tax factors

In addition to pressures from the banking authorities, tax authorities around the world are becoming increasingly assertive and sophisticated, and ready to challenge what they perceive to be abusive structures and arrangements. With increased transparency and automatic exchange of information, Cyprus companies which do not have real substance run tax risks, including the risk of having their Cyprus tax residency status being put into question, losing the benefits of Cyprus tax residence, and becoming liable to tax elsewhere.

A company lacking sufficient management and capital may be entirely disregarded by foreign tax authorities, running the risk that, in addition to any taxes payable by the company in Cyprus, its income is imputed to the beneficial owners in their own country and taxed there. The availability of a notional interest deduction in Cyprus provides an incentive to increase the company's capital and economic substance and benefit from reduced taxation on new equity.

Companies with transactions with related parties increasingly face transfer pricing challenges, making transfer pricing a compliance priority for entities carrying out cross-border transactions. Under the detailed transfer pricing rules introduced in Cyprus in 2017, companies need to demonstrate real substance in Cyprus in the form of adequate management and capital.

Fundamentals of substance and ways to enhance it

The key pillars of substance are sufficiency of management and capital.

Sufficient management means having adequate corporate governance arrangements and directors with the skills, knowledge and experience to run the business, who make the important business decisions in Cyprus. They need to spend adequate time on the business of the company and they must have real decision-making powers. They must not be directed by the shareholders but should always act independently in the interests of the company.

Depending on the size of the business, the existence of an office in Cyprus, as well as facilities and employees, can be important in enhancing substance. The operation of bank accounts, and the accounting and human resource functions should preferably take place in Cyprus. The company might also usefully take part in the local business community by joining the Chamber of Commerce, the Cyprus International Businesses Association and similar bodies.

Clearly, the optimum degree of presence will be determined by the needs of the business. If, for example, a holding company holds just one investment and the only decision is to declare a dividend once a year, or if a financing company has just one loan which is assessed only once a year, the physical presence required will be much less than for a larger business.

Sufficiency of capital means that the company has enough of a capital buffer to assume the risks of its operations. It is not, therefore, a mere conduit or proxy, and the profits or losses from the operations evidently belong to it alone.

One final point that should be made is that any decisions made to enhance substance in Cyprus may well have an effect in other jurisdictions. Consequently, these issues should always be considered in the round, in the context of the entity or of the group of which it is a part.

Topical News Briefing: Any Port In A Tariff Storm

by the Global Tax Weekly Editorial Team

As highlighted in this week's issue of *Global Tax Weekly*, global trade issues have become a major concern for multinational businesses, in particular rising tariffs on imports which, like taxes, can have a significant impact on a company's profitability.

Since the formation of the WTO in 1995, trade disputes have been a relatively common occurrence which often resulted in the imposition of tariffs, or import taxes, on certain items traded between one country and another. Generally, though, these disputes were on a relatively small scale, and the world seemed to be trending more towards freer trade as opposed to more restrictive trade rules, as demonstrated by the recent agreement of several significant bilateral and multilateral trade agreements, such as the free trade deals between Canada and the European Union, and between the nations of the Pacific Rim.

However, in the past year or two, certain mainly political developments have served to ratchet up trade tensions between the world's largest economies and cause legal uncertainty to spiral upwards by several orders of magnitude, namely Brexit, US protectionism, and retaliatory tariffs.

Two years on from the United Kingdom's decision to exit the European Union, we are still not much closer to knowing what the post-Brexit trading arrangements will look like, and what impact they will have on the GBP423bn (USD560bn) worth of goods traded between the EU and the UK. Indeed, the possibility of a "no deal" Brexit cannot be ruled out, and few people seem sure what the consequences of this would be.

The UK Government's recently-released policy paper on future trading arrangements (also reported in this week's *GTW*) aims for as much frictionless trade as possible, but, with much hard bargaining ahead in the Brexit negotiations, businesses should anticipate that trading conditions between the UK and the EU will not be as seamless as they are at present following the expiration of the transition period, at the very least.

However, since the Brexit referendum, across the Atlantic, the protectionist trade policies of the administration of President Trump have been making even bigger waves, from North America to

Europe and Asia, with the tariff wars seemingly escalating. And, much like global tax reforms are having a major impact on the investment decisions of multinational companies, trade policies, and particularly the imposition of tariffs on a widening array of goods, are doing likewise.

In one widely reported example, US motorcycle manufacturer Harley-Davidson announced in June 2018 a long-term plan to shift production from the US to locations in the European Union in response to the EU's decision to impose retaliatory tariffs on certain US products, including motorcycles.

Indeed, tariffs are becoming a major worry at board level. Last month, the American Institute of CPAs announced that 40 percent of the CEOs, CFOs, controllers and other senior-level CPAs in business and industry who responded to its survey on the issue, said that their business would be impacted by the imposition of US tariffs, or by potential retaliation from trading partners.

Just how all this will pan out is difficult to ascertain at present. It would appear to be the case that Congress is keen to rein in the ability of the executive to set tariffs after the Senate voted overwhelmingly in favor of a motion that, if adopted, would require the Government to consult Congress on tariff designations for national security purposes. That the motion was non-binding means it was of largely symbolic value. Nevertheless, legislation is pending that would enshrine such a requirement in law, and it has wide bipartisan support.

Enactment of this legislation is not a given, however. And more generally, nobody can be certain what the future holds as regards the international trading framework. But perhaps we can expect to see more companies following in the tire tracks of Harley-Davidson and repositioning their supply chains to mitigate the effect of rising tariff barriers.

Going Global For The First Time?

by Jen Stein, Managing Director, Global Tax Network

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The information provided in this article is for general guidance only and should not be utilized in lieu of obtaining professional tax and/or legal advice.

Introduction

Imagine you are sitting at your desk working diligently away and the president of your company comes to you and says, "In order to expand our business, we are venturing overseas. I would like to send Jane Smith to Germany for three years. Can you make it happen?"

In many organizations, the leap to having a globally mobile population starts in a similar fashion.

So, what basic infrastructure is required to administer and support globally mobile individuals?

Basic infrastructure can be divided into the following categories:

- Establishing policies;
- Formalizing the payroll process; and
- Selecting vendors.

Establishing Policies

Before drafting a global mobility policy, consider the business needs of the organization:

- Determine the assignment types, *i.e.*, long-term assignments (generally defined as more than one year), short-term assignments, permanent transfers, *etc.*; and
- Determine the compensation and tax structures.

Oftentimes, the first global assignment for a company is a long-term assignment such as in the above example for Jane. For these types of scenarios, many companies will utilize a "balance sheet approach" for the compensation methodology, along with "tax equalization" for the tax reimbursement methodology. The balance sheet approach provides certain compensation "up-lifts" to allow a mobile employee to maintain their Home-based purchasing power. Similarly, an employee under tax equalization is held to the tax burden that would have applied had they remained working in their Home location.

Use of the balance sheet and tax equalization approaches will allow an employee to:

1. Receive sufficient funds to realize purchasing power from the employee's current consumption expenditure pattern, reasonably equivalent to what they would have had at Home;
2. Bear a similar tax burden to what they had at Home, neither paying a penalty nor receiving a windfall;
3. Have at least the same opportunity to save, as they would have had at Home.

Various allowances may be paid to the employee to ensure a compensation package at the assignment location with an equivalent Home-based purchasing power. Paying separate allowances also makes assimilation back into the Home country compensation structure easier at the end of the assignment as these allowances are not included in the individual's base salary and can be discontinued upon repatriation.

In addition, most companies maintain international assignees on their Home country benefits program. This is consistent with the temporary nature of the assignment. In this way, the employees maintain their current level of benefits and protect their ability to participate in retirement programs.

At a minimum, we would recommend that an assignment letter detailing the compensation structure be provided to the employee even if no formal global mobility policy has been formally established.

Formalizing The Payroll Process

Once the type of assignment is decided, then working out the payroll process will follow. In Jane's situation, since she is going on a long-term assignment, the company will maintain her in the Home country payroll system and benefit plans.

By continuing to pay Jane out of her Home country, she will continue to have funds in Home country currency to pay ongoing obligations such as mortgage and credit cards. In addition, her payments to Home country social tax obligations (*e.g.*, Social Security and Medicare) and retirement plans are consistent.

The employee may also need funds in the Host country currency. To accommodate this, the company may deliver a portion of the base salary and allowances in Host country currency. Note the location of payment does not, in and of itself, determine the taxability of the income. The company will need to review the payroll reporting and withholding requirements in the Home and Host location, as well as ensuring compliance with local laws.

The actual cross-border payroll process is more complicated than that of a domestic employee. For example, in an international scenario, the company will need to:

- Determine the need for allowances to address incremental employee costs or necessary incentives, typically in the form of cash or benefits-in-kind (*i.e.*, employer-provided housing);
- Establish procedures to advise the Payroll Department (Payroll) of what to pay and when to pay it:
  - Advise Payroll of procedures, as there may be specific cutoffs for processing payments;
  - Document all instructions to Payroll in writing; and
- Establish procedures to advise employees of changes to their allowances.

At year-end, the tax provider preparing the employee's Home and Host country tax returns will request a summary of the various amounts paid to or on behalf of the employee. Payroll may be unable to provide detailed information for amounts paid in addition to base salary. To avoid a last minute rush to accumulate information, it is important to meet with Payroll as soon as possible to establish the infrastructure for international assignments. It is critical to determine the capabilities of the payroll system and establish an alternative method for tracking the information, if appropriate.

Selecting Vendors

The saying, "It takes a village…" is very fitting in the world of global mobility. It is very likely the following providers (among others) will be involved in Jane's move to Germany:

- Immigration provider;
- Relocation management company;

- Mobility tax provider;
- Language and destination services provider.

Selecting the proper vendors to assist your organization can be a daunting and time-consuming process. To assist in the process, and to make it more manageable, consider reaching out to your professional network for references, checking with your local relocation council, or reviewing what relationships already exist within your organization.

While the above is not an all-inclusive process for moving your employees around the world, it can be used as a baseline – and don't forget to seek help from your village.

IRS Ramping Up Efforts To Deny And/Or Revoke The Passports Of Nearly 362,000 Americans

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Department of the Treasury
Internal Revenue Service

The Internal Revenue Service (IRS) just released a bombshell announcement that has sent ripple effects through the US expat community. It said that 362,000 Americans with "seriously delinquent" overdue tax bills will be denied passports or passport renewals[1] if they do not pay their tax bill.

As a way of background information, the IRS has the power to bar passports. Congress bestowed this authority on the IRS back in 2015 and it has been enshrined in IRC Section 7345. IRC Section 7345 imbues the IRS with what some critics refer to as the "nuclear option" – the right to certify to the State Department that a taxpayer has a "seriously delinquent tax debt."

A seriously delinquent tax debt is defined as an outstanding IRS tax liability in which (1) the taxpayer owes the government more than USD51,000 in back taxes, penalties and interest, and (2) a Notice of Federal Tax Lien has previously been filed and the period to dispute it has lapsed, or the IRS has issued a levy with respect to the tax debt. If you're wondering why the State Department is involved, it's because they are the governmental agency that oversees passport applications.

Once the State Department receives certification of a tax debt from the IRS, this begins a chain reaction deep inside the catacombs of the State Department. Standard operating procedures call for the State Department to discontinue issuing or renewing the taxpayer's US passport. But that's just the tip of the iceberg. The State Department may also revoke the passport. In the case of taxpayers with overdue taxes who live overseas, the State Department is not as heavy-handed; they have carved out a narrow exception that allows such taxpayers a limited passport good for a direct return to the United States. Some consider this a major insult more than a "carrot."

Thanks in part to FATCA,[2] the IRS has been sending tens of thousands of violators' names to the State Department. The IRS began ratcheting up this enforcement effort back in February 2018. For those unfamiliar with FATCA, this is a good time for a short digression into the law that has made this all possible. FATCA is a 2010 United States federal law requiring all non-US ("foreign") financial institutions (FFIs) to search their records for customers with *indicia* of "US-person" status, such as a US place of birth, and to report the assets and identities of such persons to the US Department of the Treasury.

FATCA also requires such persons to self-report their non-US financial assets annually to the IRS on Form 8938, which is in addition to the older and further redundant requirement to self-report them annually to the Financial Crimes Enforcement Network (FinCEN) on form 114 (also known as "FBAR"). Like US income tax law, FATCA applies to US residents and also to US citizens and green card holders residing in other countries.

The State Department has issued a stern warning that violators who do not resolve their tax issues before applying for a passport will have their application delayed or denied.[3] Meanwhile, taxpayers with seriously delinquent tax payments who have already applied for a new US passport are not exempt: they will not be issued a new passport unless and until such time as they have resolved their tax issues with the IRS.

How can taxpayers avoid the IRS tipping them off to the State Department? There are a few ways, some of which are obvious. Others may not be so obvious.

First, pay your overdue taxes in full, or negotiate an installment agreement to pay the debt over time, or apply for an offer in compromise. If the first image that comes to mind is the iconic one of Uncle Sam pointing his finger at the viewer in order to recruit soldiers for the Army during World War One, then I suppose that the IRS's stern warning has succeeded in giving taxpayers the Heebie-jeebies. If there is anything positive to come out of this option (and I'm not so sure there is because it assumes that the taxpayer can readily access the money), it's that the IRS will offer payment plans to "financially distressed" taxpayers.

At least one person paid USD1m in overdue taxes to avoid having their passport denied, according to the *Wall Street Journal*. As of June 2018, at least 220 people have paid a total of USD11.5m in overdue debts, according to the *Journal*.

Second, there is a certain class of taxpayers that are exempted – meaning not at risk of losing their passports – even if they satisfy the conditions that trigger the nuclear option. This includes taxpayers who are in bankruptcy, or who are victims of tax-related identity fraud or whose accounts are currently not collectible due to financial hardship. Also, those taxpayers living in a federally-declared disaster area won't have their passports revoked.

Finally, there is always the IRS streamlined procedures (and for a limited time the IRS's Offshore Voluntary Disclosure Program) that offer a way to come into compliance with your US tax obligations without risking a referral to Criminal Investigation and, in a large number of cases, without losing the shirt off your back.

For those wishing and hoping that the number of certifications will subside, the news is grim. According to a report issued by the Taxpayer Assistance Service (TAS), not only is it unlikely to subside, it's expected to grow to monumental proportions. In this respect, it's not unlike that boulder from Greek mythology that Sisyphus, the king of Ephyra, was condemned to roll up a hill for eternity only to see it roll back down over and over again when it gets to the top.

According to a report issued by the TAS, the IRS plans on stepping up its certification to a staggering rate of 5 to 10 percent each week until all taxpayers satisfying the criteria have been certified. If you're curious to know how many taxpayers meet the certification criteria and do not qualify for the exclusion, the report estimates that figure to be in the ballpark of 436,000.

The TAS has not sat back quietly in the wake of this. They have sharply criticized the IRS on the grounds that the notice it sends taxpayers regarding the passport certification program lacks sufficient information and does not fully apprise taxpayers of their rights. Failing to apprise taxpayers of their rights is inexcusable, especially in light of the fact that freedom of movement has been judicially recognized as a fundamental Constitutional right as far back as 1823 in the circuit court ruling of *Corfield v. Coryell*,[4] 6 Fed. Cas. 546. In *Paul v. Virginia*,[5] 75 US 168 (1869), the US Supreme Court defined freedom of movement as "right of free *ingress* into other States, and *egress* from them". While the Supreme Court did not invest the federal government with the authority to protect freedom of movement – this authority was granted to the states under the "privileges and immunities" clause – the fact remains that revoking a person's passport is a serious deprivation of a fundamental liberty interest that should not be taken lightly.

To add insult to injury, the government appears to be doing so with impunity.

The TAS has attempted to assuage the concerns of taxpayers by continuing to work with the IRS to ensure its plans and procedures are narrowly tailored to achieving the purpose of the statute without imposing an undue hardship on taxpayers. Only time will tell whether this is double talk or straight talk. Get ready for what is gearing up to be a hot summer.

Endnotes

1 https://www.irs.gov/businesses/small-businesses-self-employed/revocation-or-denial-of-passport-in-case-of-certain-unpaid-taxes

2 https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca

3 https://travel.state.gov/content/travel/en/News/passports/passports-and-seriously-delinquent-tax-debt.html

4 https://en.wikipedia.org/wiki/Corfield_v._Coryell

5 https://en.wikipedia.org/wiki/Paul_v._Virginia

Topical News Briefing: A Race To Corporate Tax Convergence?

by the Global Tax Weekly Editorial Team

The dangers of unilateral responses to the OECD's BEPS recommendations at jurisdictional level have been much discussed by international tax policy experts. However, perhaps we are entering an era when multinational businesses can expect broadly similar tax conditions wherever they happen to operate.

This seems to be the view of Luxembourg's Finance Minister Pierre Gramegna, who in an interview with a local journal (reported in this week's issue of *Global Tax Weekly*) suggested that, far from there being a race to the bottom on corporate tax rates, the real trend is towards convergence, both with respect to tax rates and tax bases.

While rates are still set to fall in many jurisdictions, including France, Belgium and the Netherlands, it looks to be the case that corporate tax rates are pivoting around the 20 percent mark, at least as far as the OECD grouping is concerned. At the same time, corporate tax bases have widened, as jurisdictions have repealed "harmful" corporate tax regimes and implemented substantial elements of the OECD's final BEPS reports. This prompted Gramegna to observe that national regimes could be converging into a broad corporate tax "corridor."

It is certainly the case that multinational corporations can expect to encounter transfer pricing laws and regulations in more jurisdictions than ever, including some low-tax jurisdictions that just a few years ago would not have entertained the idea of introducing such anti-avoidance regimes in order to protect their competitiveness. A good example (also reported in this week's *GTW*) is Hong Kong, where BEPS minimum standards have been enshrined in law and the new transfer pricing system has been codified based on OECD recommendations.

While still a relatively new feature of the international tax landscape, country-by-country reporting is quickly becoming standard practice too. As also reported in this week's issue, Canada was one of 69 jurisdictions to have automatically exchanged CbC reporting information last month.

However, all this isn't to suggest that the waters are becoming easier to navigate at multi-jurisdictional level, especially with regards to transfer pricing, and surveys suggest that this is still a major area of concern for multinational companies. These tend to show that multinationals are increasing staffing levels within their tax teams, and that BEPS issues, particularly transfer pricing, have become an important board-level issue. And it is not only the new rules themselves that are of concern to multinationals; the way they are applied and enforced is also a major source of worry. An astonishing 93 percent of respondents to a 2017 survey conducted by Deloitte expect tax authorities to increase tax audit activity, with 96 percent believing that tax authorities will apply greater scrutiny to the level of substantive business operations conducted in low-tax countries.

What's more, unilateralism is not a spent force as regards the BEPS project. We only need look at some of the unique BEPS measures included in the US tax reform legislation to see that; while the EU is attempting to plow its own digital tax furrow despite calls from its own member states (including Luxembourg) for this issue to be worked out multilaterally. There's certainly enough still going on in the world of corporate taxation, then, to keep company corporate tax departments on their toes.

EU Council Fails To Agree E-Books, VAT Reverse Charge Plans

On July 13, the European Council discussed but was unable to reach an agreement on a new generalized VAT reverse charge mechanism and reduced VAT rates for e-publications.

The "generalized reverse charge mechanism" would allow EU member states to apply temporarily a generalized reversal of VAT liability. The proposal would shift liability for VAT payments from the supplier to the customer and would apply to supplies of goods and services above an invoice threshold of EUR10,000 (USD11,712).

The Council must unanimously agree upon the proposals for them to be implemented. It stated that it was unable to reach an agreement at this stage and will discuss the issue again at its October meeting.

The Council made the same statement regarding its inability to reach an agreement on the Commission's proposal to allow member states to apply non-standard VAT rates to electronic publications, which would align their treatment with traditional, tangible printed matter.

UK Releases Making Tax Digital For VAT Guidance

HM Revenue & Customs (HMRC) has issued comprehensive guidance for the first time for taxpayers, agents, and software developers on new digital tax administration obligations for value-added tax registered persons in the UK.

The changes are part of the Government's Making Tax Digital project. Under MTD, from April 1, 2019, businesses with a turnover above the VAT threshold (currently GBP85,000, or about USD119,500) will have to: keep their records digitally (for VAT purposes only), and provide their VAT return information to HM Revenue and Customs (HMRC) through MTD-compatible software. MTD will be available on a voluntary basis to other businesses, for both VAT and income tax.

The second draft of Finance Bill 2017, published on September 8, 2017, included legislation allowing for the introduction of Making Tax Digital for VAT. This primary legislation gave HMRC the powers to introduce regulations for the regime in December 2017, which set out the detailed requirements that businesses will have to meet – The Value Added Tax (Amendment) Regulations 2018. Previously HMRC released limited guidance on the legislative provisions and an overview of the regime.

As well as explaining the compliance obligations for taxpayers, the new guidance includes a section for tax agents and includes technical support for those responsible for making the necessary changes to IT infrastructure and for software developers.

Thailand's VAT Rate To Remain At Seven Percent

Thailand's value-added tax rate will remain at seven percent for another year, the Government has announced.

The seven percent VAT rate was due to expire on September 30, 2018, but was extended to September 30, 2019. After that date, the VAT rate will return to the 10 percent rate prescribed by law.

Hong Kong Enacts BEPS, Transfer Pricing Laws

Hong Kong has confirmed the entry into force of a law that will enable the territory to exchange information automatically with other nations on taxpayers' financial accounts, on multinationals' tax affairs, and on tax rulings. Another law updates and enhances the territory's transfer pricing regime based on OECD recommendations.

The Inland Revenue (Convention on Mutual Administrative Assistance in Tax Matters) Order will ensure that the OECD's Convention on Mutual Administrative Assistance in Tax Matters enters into force on September 1, 2018, when the first exchanges of information under the OECD's new tax transparency standard, the Common Reporting Standard, will take place. Such exchanges cover the financial account data of other countries' taxpayers in Hong Kong financial institutions. It will also be the framework through which Hong Kong will exchange country-by-country reports and spontaneously exchange information on tax rulings.

Pursuant to the reservations made under the Convention, Hong Kong will not render assistance to other tax authorities in terms of recovery of tax claims or fines, service of documents, etc.

The second law, the Inland Revenue (Amendment) (No. 6) Ordinance 2018, implements the BEPS minimum standards into Hong Kong law, and codifies new transfer pricing principles.

Under the ordinance, the ultimate parent entity of a multinational enterprise group which is Hong Kong tax resident is required to file country-by-country (CbC) reports with the Inland Revenue Department for exchange with other relevant jurisdictions if the group's annual consolidated revenue is not less than HKD6.8bn (USD866m).

The ordinance also requires taxpayers to prepare a master file and a local file as part of their transfer pricing documentation. In addition, the ordinance establishes a statutory basis for cross-border dispute resolution mechanisms (mutual agreement procedure and arbitration) and advance pricing arrangements.

In general, the provisions relating to transfer pricing will apply to tax years beginning on or after April 1, 2018, the provisions relating to CbC reporting will apply to accounting periods beginning on or after January 1, 2018, and those relating to master file and local file obligations will apply to accounting periods beginning on or after April 1, 2018.

Hong Kong's Inland Revenue Department says it will subsequently provide further guidance on the new requirements.

Canada Announces First Exchange Of CbC Reports

Canada has announced that it has exchanged companies' country-by-country reports with other territories for the first time.

Under Section 233.8 of Canada's Income Tax Act, CbC reporting requirements apply to any multinational group that has total consolidated group revenue of EUR750m (USD872m) or more in the immediately preceding fiscal year. A CbC report must be prepared and contain aggregate tax jurisdiction-wide information relating to the global allocation of income, taxes paid, and certain indicators of the location of economic activity among the jurisdictions in which the reporting group operates.

Canada is one of 69 nations that have agreed to share CbC reports. The first exchanges took place in June.

Revenue Minister Diane Lebouthillier explained that: "Our participation in this global initiative will allow the Canada Revenue Agency to better understand these companies' worldwide operations, and help ensure compliance with Canada's tax laws. Thanks to country-by-country reporting, Canada now has automatic access to more information and data that will allow the Canada Revenue Agency to better risk assess large multinational enterprises … and to better target its efforts and resources."

Australia Issues New Transfer Pricing Guidance

The Australian Taxation Office has released Draft Schedule 2 to Practical Compliance Guideline (PCG) 2017/1, setting out its approach on transfer pricing issues relating to centralized operating models and specifically procurement, marketing, sales, and distribution functions.

The draft guidance is intended to help taxpayers understand the ATO's view and likely compliance response to their transfer pricing arrangements, and in particular to those dealings that are at a higher risk of shifting excessive profits to a low-tax jurisdiction.

The guidance also provides a self-assessment risk framework that allows taxpayers to assess the transfer pricing outcomes for certain types of purchases they make from a related-party offshore hub.

The ATO said that the draft guidance will give taxpayers increased certainty over the risk profile of their commercial activities, by giving a practical administrative approach to how taxpayers can best meet their obligations while minimizing their compliance costs.

A consultation on the draft guidance closes on July 27.

OECD Issues New TP Guidance On Financial Transactions

The OECD has launched a new consultation on additions to its guidance on transfer pricing issues under its base erosion and profit shifting project on financial transactions.

The guidance is intended to supplement the 2015 report on BEPS Actions 8-10. The discussion draft aims to clarify the application of the principles included in the 2017 edition of the OECD Transfer Pricing Guidelines and, in particular, the accurate delineation analysis under Chapter I to financial transactions, the OECD said.

Specifically, the first part of the discussion draft provides guidance on the application of the principles contained in Section D.1 of Chapter I of the Transfer Pricing Guidelines to financial transactions. In particular, Section B.1 of the discussion draft elaborates on how the accurate delineation analysis under Chapter I applies to the capital structure of an MNE within an MNE group. The discussion draft clarifies that the guidance included in this section does not prevent countries from implementing approaches to address capital structure and interest deductibility under their domestic legislation.

Section B.2 outlines the economically relevant characteristics that inform the analysis of the terms and conditions of financial transactions.

The second part of the discussion draft, contained in sections C, D and E, addresses specific issues related to the pricing of financial transactions such as treasury function, intra-group loans, cash pooling, hedging, guarantees, and captive insurance.

The consultation is open until September 7, 2018.

Gramegna Calls For Multilateral Approach To Digital Taxation

Luxembourg's Finance Minister Pierre Gramegna has reiterated his position that solutions to the tax challenges of the digital economy should be made at multilateral level.

"We prefer a solution at the OECD level," Gramegna told Luxembourg political journal Forum in an interview published on the Government's website.

"The OECD will finalize its BEPS report over the next few months, which will tackle this issue. On this basis, it may then be possible to create a 'level playing field.' We prefer this approach to a solo effort by Luxembourg or the EU," he added.

Gramegna warned that if the EU proceeds with its own proposals in this area unilaterally, it could "intensify the trade war with the US," and damage the bloc's competitiveness.

On the issue of how US tax reform will affect Luxembourg's finance center and wider economy, particularly the corporate tax cut, Gramegna pointed out that Luxembourg's rate remains lower and corporate tax competition is becoming a lesser factor internationally.

"The US tax rate is now 21 percent, that of Luxembourg is 18 percent and that of France is still slightly higher than these two. You can already see a certain convergence of tax rates here," he said.

Gramegna also revealed that Luxembourg expects to pass legislation transposing the requirements of the EU Anti-Avoidance Directive into domestic law by the end of 2018.

IMF: NAFTA, US Tax Cuts Causes For Canadian Concern

The IMF has identified acute external risks to the Canadian economy, including the impact of recent US tax reforms and uncertainty around the ongoing NAFTA renegotiations.

The IMF has published the findings of its latest Article IV consultation with Canada. It said that Canada's economy has performed well, with growth of around two percent expected in 2018 and 2019. However, the IMF also concluded that "economic anxiety is high due to trade tensions, uncertainty about the outcome of NAFTA negotiations, and the impact of the US Tax Cuts and Jobs Act on Canada's medium-term competitiveness."

The IMF argued that the impact of the US tax reforms should be fully studied and assessed by Canada. Some IMF Directors suggested that a review of Canada's tax system "could usefully evaluate the scope for improving efficiency while maintaining competitiveness."

The IMF's report stated that "the impact of lower tax rates in the US could make Canada a less attractive destination for investment, leading to heightened uncertainty about Canada's medium-term growth prospects."

The IMF did nonetheless emphasize that Canada should "avoid a hasty reaction to recent developments," and should instead "carefully consider the implications of any potential tax changes."

The IMF also reflected on ongoing efforts to renegotiate NAFTA. It urged Canada, the US, and Mexico to "work constructively to reach an agreement within a reasonable timeframe that further opens trade and promotes competition."

The IMF suggested that delays in reaching a new NAFTA deal could impact investment and growth in Canada for an extended period. It cited research which estimates that should NAFTA collapse and the countries revert to non-preferential tariffs, Canada's long-run real GDP could fall by around 0.4 percent. Should trade tensions further escalate between Canada and the US, still higher tariffs could be imposed, driving up inflation "as import prices rise sharply and the exchange rate depreciates."

The IMF said that Canada should ratify the new Comprehensive Progressive Agreement for Trans-Pacific Partnership – negotiated after the US pulled out of the original TPP agreement – as soon as possible.

US Senate Votes For Greater Say In Tariff Designations

The United States Senate has voted 88-11 in favor of a motion that, if adopted, would require the Government to consult Congress on tariff designations for national security purposes.

The non-binding motion approved by the Senate on July 11 would instruct congressional conferees negotiating a final version of a spending bill to include language "providing a role for Congress" when tariffs are designated by the administration for national security purposes under Section 232 of the Trade Expansion Act of 1962.

As the motion is non-binding, it is expected to represent a symbolic victory for members of Congress opposed to the administration's current trade policy, particularly with respect to the use of national security designations to impose tariffs on imports that are ostensibly economic in nature.

However, a separate bill introduced in Congress by a bipartisan group of 12 senators last month would, if passed, require congressional approval of tariffs designated for national security purposes.

Commenting on the vote, Senator Pat Toomy (R-PA), one of the supporters of the motion, argued that the administration "is wrong to use 'national security' as a pretext to impose taxes on steel and aluminum from our closest allies."

Senator Bob Corker (R-TN), who is leading efforts for greater congressional oversight on the use of tariffs, said: "Tariffs are a tax on the American people, and as the US economy and American businesses and consumers begin to feel the damaging effects of incoherent trade policy, I believe support for our legislation will only grow. We will continue to push for a binding vote and are hopeful one will be scheduled in the near future."

European Union, Japan Sign FTA

The EU and Japan signed a new trade agreement, described as "the biggest and most advanced bilateral agreement ever negotiated by the European Union," on July 17.

On July 6, the European Council approved the signature of the agreement and decided that the European Parliament must afterwards give its consent for the formal conclusion of the agreement.

When fully implemented, the agreement will remove 99 percent of the tariffs currently applied on EU exports to Japan. For example, Japan will scrap duties on many cheeses (currently as high as 29.8 percent) and on wine exports (currently at 15 percent on average). The agreement will allow the EU to substantially increase its beef exports to Japan and to export processed pork meat tax-free.

The agreement guarantees EU companies access to procurement markets in 48 large Japanese cities and removes obstacles to procurement in the railway sector at national level.

EU firms export over EUR58bn (USD68.2bn) in goods and EUR28bn in services to Japan each year.

EU Trade Commissioner Cecilia Malmstrom revealed that: "The [EU-Japan Economic Partnership Agreement] creates a free trade zone covering 600 million people and a third of global GDP. Together with our Japanese partners we are sending a strong signal to the world that we still believe in open trade and that protectionism is never the answer."

"The economic benefits of this agreement are clear. It will eliminate the vast majority of duties paid by our firms and simplify customs procedures across the board. The deal will open huge market opportunities for both sides."

Negotiations toward a trade agreement began in March 2013 and an agreement in principle on the main elements of the agreement was reached in July 2017. Negotiations on all outstanding issues were concluded in December 2017. It is expected to enter into force in early 2019.

UK Must Leave EU VAT Area, UK's Lower House Votes

Upon leaving the European Union, the UK should not be included in the EU VAT area and should adopt its own specific VAT regime, UK lawmakers agreed on July 16, 2018, in a move that may derail the Government's efforts to agree a Brexit transition period to cushion the impact of Brexit on firms.

After having secured just a three-vote majority in the House of Commons on July 16, 2018, Euroskeptic UK lawmakers won enough support for four amendments to be made to the Taxation (Cross-Border Trade) Bill. These included a proposal to drop a provision that the UK may include in ongoing negotiations continued participation in the EU VAT area.

Instead, one of the four amendments blocks UK participation in the EU VAT area. It had been suggested by the EU that at least Northern Ireland could continue to be included within the EU VAT area, to prevent a hard border emerging between the Republic of Ireland and Northern Ireland. Failure to agree a solution to the border issue on the island of Ireland would be a deal-breaker for the EU, which has warned otherwise of a potential no-deal divorce between the UK and the EU.

The amendment, passed with 303 votes for and 300 votes against, is expected to significantly handicap the Government in talks with the EU on a deal that would avoid this hard border, potentially leading to the most severe of "hard Brexit" options – a no deal with complete separation.

Reportedly, in approving the four amendments, the Government is now committed to seeking a VAT system separate from the EU's after Brexit (under ERG Amendment 73). In leaving the EU VAT area, among other things, the UK would not be compelled to align its law with EU VAT law, it would not be bound by the European Court of Justice's rulings on value-added tax matters, and it would not be compelled to collect VAT on behalf of EU member states.

As well as passing the four amendments, a new Clause 37 was added to the UK's Brexit plans that contradicts the EU's plans for a so-called "Irish backstop," which would include Northern Ireland in the EU Customs Union.

Taken together, the changes could mean that talks on a Brexit deal could dissolve without a deal being agreed on a Brexit transition period, meaning the UK could abruptly leave the EU without a transition period on March 29, 2019.

With the aforementioned amendments, the House of Commons passed the Taxation (Cross-Border Trade) Bill on July 16, 2018. It will now be tabled before the House of Lords.

EU Civil Society Organizations Concerned By Digital Tax Plans

While welcoming the current debate on how to solve the tax challenges of the digital economy, the European Economic and Social Committee has said that proposals in the EU for an "interim" tax on the revenue of certain digital services companies could distort the single market and lead to double taxation.

The EESC is an EU consultative body formed of civil society organizations from EU states. Announcing the publication of its opinion on the issue on July 13, the EESC called for "a fair, consensus-based international solution at the OECD level which contributes to achieving fair taxation principles and fair revenues for small and large countries alike."

"Any solution for the taxation of digital business models proposed for the EU level must consider the global dimension and should be in line with international achievements in this field so as to ensure coherence and real support for consensus-building at OECD level," the Committee suggested.

"The legislative package put forward by the European Commission takes another path: contrary to common international corporate taxation practice, it aims, for instance, to tax businesses' turnover instead of profits, and to levy taxes where sales take place instead of where value is created," it added.

The Commission's proposal, issued in March 2018, included two measures: an interim tax on the turnover of companies engaged in digital activities that would otherwise go untaxed, at a rate of three percent; and a longer-term solution, which the EU will seek to achieve international consensus on under the leadership of the OECD, which would establish new digital permanent establishment rules.

The interim measure would be levied on revenues created from selling online advertising space; created from digital intermediary activities; and those created from the sale of data generated from user-provided information. Such would apply only to companies with total annual worldwide revenues of at least EUR750m (USD875m) and EU revenues of EUR50m.

Commenting on the proposals, Krister Andersson, rapporteur for the EESC, said: "It is essential that any solution on corporate tax rules for digital activities creates a level-playing field for all EU economies."

"The Commission has initiated an in-depth international debate about digital taxation with its proposals," Andersson continued. "What is now of the utmost importance is that the member states come to a common position and advance the ongoing discussions, in order to achieve the necessary global solution at the OECD level."

The EESC called for a assessment of the impact of the proposed interim measure on investment, start-ups, SMEs, jobs, and growth.

Australia Issues New Cryptocurrency Tax Guidance

The Australian Taxation Office has recently added to its guidance on the tax treatment of cryptocurrencies and in particular Bitcoin, focusing on the loss or theft of cryptocurrency and the tax rules for chain-splits.

The new guidance states that taxpayers may be able to claim a capital loss if they lose their cryptocurrency private key or cryptocurrency is stolen.

The ATO advised taxpayers: "The issue is likely to be whether the cryptocurrency is lost, whether you have lost evidence of your ownership, or whether you have lost access to the cryptocurrency. Generally where an item can be replaced it is not lost. A lost private key cannot be replaced. Therefore, to claim a capital loss you will need to be able to provide the following kinds of evidence:

- when you acquired and lost the private key
- the wallet address that the private key relates to
- the cost you incurred to acquire the lost or stolen cryptocurrency
- the amount of cryptocurrency in the wallet at the time of loss of private key
- that the wallet was controlled by you (for example, transactions linked to your identity)
- that you are in possession of the hardware which stores the wallet
- transactions to the wallet from a digital currency exchange for which you hold a verified account or is linked to your identity."

The ATO's guidance on chain-splits is intended to provide assistance to those holding virtual currencies that were effectively split as a result of the launch of new code by a group of developers that was intended to improve how data is stored and shared using blockchain technology, as well as to speed the processing of payments and cut transaction fees for users. This resulted in the creation of Bitcoin Cash in August 1, 2017. For every unit of Bitcoin held, the taxpayer received one unit of Bitcoin cash under the new system – in effect, the cryptocurrency was "split" into two.

The ATO has advised taxpayers: "If you hold cryptocurrency as an investment, and receive a new cryptocurrency as a result of a chain split (such as Bitcoin Cash being received by Bitcoin holders), you do not derive ordinary income or make a capital gain at that time as a result of receiving the new cryptocurrency."

"If you hold the new cryptocurrency as an investment, you will make a capital gain when you dispose of it. For the purposes of working out your capital gain, the cost base of a new cryptocurrency received as a result of a chain split is zero. If you hold the new cryptocurrency as an investment for 12 months or more, you may be entitled to the CGT discount."

India Issues Consultation On Design Of New Digital PE

India's Central Board of Direct Taxes has issued a consultation on the design of the country's new digital permanent establishment rules, which are proposed to be introduced from April 1, 2019.

The digital PE rules would expand the definition of business connection to India to include a non-resident entity with a "significant economic presence (SEP)" in the country. Initially it was proposed that such an SEP would be satisfied through: "transaction[s] in respect of any goods, services, or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means."

The new consultation concerns the as yet undetermined thresholds mentioned above for a company to have established a digital PE, or SEP.

When announcing the digital PE proposals, the Government confirmed that the terms of tax treaties held by India with other countries in relation to permanent establishment rules will continue to be observed.

The Indian Government announced on July 13, 2018, that it would add to the aforementioned wording, to provide that "transactions or activities shall constitute SEP in India whether or not the agreement for such transactions or activities is entered into in India or the non-resident has a residence or place of business in India or renders services in India."

Further, the Government announced, "it is also provided that only so much of income as is attributable to the transactions or activities referred above shall be deemed to accrue or arise in India."

As well as clarifying the scope of the digital PE rules, the Indian Government has launched a consultation on what thresholds, in terms of sales volumes or number of users, should be used for a business to have established a SEP.

Specifically, it is seeking input on thresholds in respect of the value of supplies of physical goods or services by a non-resident to India to establish a digital PE; the value of supplies of digital goods or services to establish a digital PE; and the number of Indian users with whom a non-resident engages with on a systematic and continuous basis as part of their business activities.

Input is being sought until August 10, 2018.

EU Expresses BEPS Concerns In Report On Ireland's Tax System

The EU has published a set of recommendations on the Irish economy, which include broadening the tax base and limiting opportunities for profit shifting.

The Council of the European Union's latest country-specific recommendations for Ireland state that although the public finances have improved, "risks of volatility remain, and there is scope for making revenue more resilient to economic fluctuations and adverse shocks."

The Council suggested that Ireland could limit the scope and number of tax incentives and broaden the tax base, to "improve revenue stability in the face of economic volatility." Ireland could also improve the way the tax system supports environmental policies.

The Council also reflected on European efforts to tackle aggressive tax avoidance and tax planning. It noted "recent positive steps" taken by the Irish Government to tackle tax planning domestically and the possible introduction of defensive measures against jurisdictions included on the Commission's black-list of non-cooperative jurisdictions.

However, the Council also said that the "high level of royalty and dividend payments as a percentage of GDP suggests that Ireland's tax rules are used by companies that engage in aggressive tax planning."

It further argued that the limited application of withholding taxes on outbound royalty and dividend payments by companies based in Ireland – namely, payments from EU residents to third-country residents – "may lead to those payments escaping tax altogether, if they are also not subject to tax in the recipient jurisdiction."

The Council is additionally concerned that companies may abuse Ireland's bilateral tax treaties "to overrule" the tax residence rule introduced in 2015. It expressed the belief that further analysis of this issue is "warranted."

UK Releases Draft Finance Bill

The UK Government has recently published the 2018/19 Finance Bill, including proposals to amend UK tax law to introduce changes to the corporate tax regime, including to counter base erosion and profit shifting, changes to enforcement provisions and tax compliance requirements, and value-added tax changes.

In the area of corporate tax, the Bill includes changes to corporate interest restriction (CIR) rules, contained in Part 10 and Schedule 7A of the Taxation (International and Other Provisions) Act 2010 (TIOPA). These are said to be to ensure the regime works as intended. The bill will also correct a defect in the UK's legislation on loss relief rules that might otherwise lead to excessive relief being allowed.

The Finance Bill includes provisions to transpose the EU's two Anti-Tax Avoidance Directives into UK law (ATAD I and ATAD II). These Directives are intended to ensure that member states comply with at least the minimum standards proposed by the OECD in its base erosion and profit shifting (BEPS) project in a harmonized way.

The first Anti-Tax Avoidance Directive contains four legally binding anti-abuse measures, which all member states are required to apply against common forms of aggressive tax planning. ATAD II focuses on tackling hybrid mismatch arrangements, which can result in double non-taxation or a double deduction for the same income.

ATAD I covers all taxpayers that are subject to corporate tax in EU member states, including subsidiaries of companies based in third countries. It does the following:

- Limits the amount of interest that a corporate taxpayer is entitled to deduct in a tax year, to discourage the practice of artificially shifting debt to jurisdictions with more generous deductibility rules;
- Establishes exit taxation rules, to prevent tax base erosion in the state of origin;
- Introduces a general anti-abuse rule, to cover gaps that may exist in member states' specific anti-abuse legislation; and
- Introduces controlled foreign company (CFC) rules, to reattribute the income of a low-taxed controlled foreign subsidiary to its (usually more highly taxed) parent company.

EU member states have until December 31, 2018, to transpose the directive into their national laws and regulations, with the exception of the exit taxation rules, which must be transposed by December 31, 2019. Member states that have targeted rules that are equally effective to the interest limitation rules may apply them until the OECD reaches an agreement on a minimum standard, or until January 1, 2024, at the latest.

Broad changes are proposed in the Finance Bill to legislation governing the taxation of property income. For instance, under the changes, non-resident companies with a UK property business will be chargeable to corporate tax and not income tax.

A further change is proposed to capital gains tax and corporate tax on UK property gains. The proposal would extend the scope of the UK's taxation of gains accruing to non-UK residents to include gains on disposals of interests in non-residential UK property. It also extends the charge on gains on disposals of interests in residential property to diversely held companies, those widely held funds not previously included, and to life assurance companies. The measure also taxes non-UK residents' gains on interests in UK property-rich entities (for example, selling shares in a company that derives 75 percent or more of its value from UK land).

The Bill will also introduce a requirement for UK residents to make a payment on account of Capital Gains Tax (CGT) following the completion of a residential property disposal. It also expands an existing similar requirement for non-residents (including UK residents that make disposals in the overseas part of a split tax year).

The bill will also change stamp duty land tax filing and payment time limits. The time limit for filing a Stamp Duty Land Tax (SDLT) return and paying the tax due is to be reduced to 14 days.

In the area of VAT, the UK is proposing to relax VAT grouping eligibility criteria to allow non-corporate entities (for example, an individual or partnership) to join a VAT group with its body corporate subsidiaries if it controls all of the members in a VAT group.

It will also transpose the EU Voucher Directive into UK law. The UK Government says the provisions will make the rules for the tax treatment of vouchers consistent, especially where they can be used either in the UK or more widely in the EU. The Directive defines single-purpose vouchers and multi-purpose vouchers and sets rules to determine the taxable value of transactions in both cases.

Under the Directive, where the VAT treatment attributable to the underlying supply of goods or services can be determined with certainty already upon issue of a single-purpose voucher, VAT should be charged on each transfer, including on the issue of the single-purpose voucher. Under the Directive, the actual handing over of the goods or the actual provision of the services in return for a single-purpose voucher should not be regarded as an independent transaction. Meanwhile, for multi-purpose vouchers, VAT should be charged when the goods or services to which the voucher relates are applied. Against this background, any prior transfer of multi-purpose vouchers should not be subject to VAT.

The Finance Bill also includes a number of compliance- and enforcement-related measures. Notably, it includes provisions to extend the time limit for the assessment of tax in the case of offshore non-compliance to 12 years for income tax, capital gains tax, and inheritance tax.

A number of changes are proposed to late payment penalties and interest, including for income tax self assessment taxpayers and value-added tax registered persons.

The UK intends to introduce a new points-based penalty regime for regular submission obligations (for example, return filing obligations), which replaces existing penalties for the taxes in scope.

The UK Government intends to be more lenient to those making a one-off error while penalizing those who persistently fail to comply more heavily. Unlike the current penalty regime there will be no escalation to daily or tax-geared penalties. The intention is to stage implementation of the points based model commencing with VAT filing obligations from April 1, 2020.

For VAT, there is no current late submission penalty sanction. Instead, the Default Surcharge is provided for at sections 59, 59A and 59B of the Value Added Tax Act 1994. Default Surcharge is a combined late return and late submission sanction. Default Surcharge is currently being reviewed and the related interest harmonization and sanctions for late payment is being designed to replace it, HMRC has said.

Further, under the bill, there will be changes to the way Gaming Duty is calculated and accounted for. Businesses liable to Gaming Duty will be required to complete returns on a six-monthly basis and will no longer be required to make payments on account part way through their accounting periods. This measure also allows businesses to carry forward losses from one accounting period to be offset against future Gaming Duty liabilities.

Finally, from April 2019, there will be new rules aimed at preventing profit fragmentation. The provisions aim to prevent UK traders and professionals from avoiding UK tax by arranging for their UK-taxable business profits to accrue to entities resident in territories where significantly lower tax is paid than in the UK. The counteraction will be effected by adding those profits to the profits of the UK trade. This measure will also introduce a duty to notify HMRC of relevant arrangements meeting certain criteria.

France To Lure UK Bankers With Tax Breaks

Tax breaks will be included in a package of measures intended to lure high-income finance professionals to Paris from London's financial center amid Brexit uncertainty, French Prime Minister Edouard Philippe has said.

In an attempt to encourage fund managers to relocate to France, managers' carried interest would be classified as capital income and taxed at 30 percent, rather than as ordinary income, which is taxed at progressive rates up to 45 percent.

Rules would also be introduced to amortize goodwill in line with those in place in Germany, a move that would also represent a step towards the harmonization of the EU tax base, Philippe said.

According to the Prime Minster, most of the changes in the incentives package will be made by the end of 2018.

Barbados To Introduce 40 Percent Income Tax Rate In August

Barbados's Revenue Authority has announced that the new top income tax rate and band for individuals of 40 percent will be delayed by one month to August 1, 2018.

From that date, income above BBD75,001 (USD37,500) will be subject to tax at a rate of 40 percent, as announced in the June 11 Budget.

Bermuda Offering New Payroll Tax Break To New Businesses

Bermuda's Minister of Economic Development and Tourism, Jamahl Simmons, has announced payroll tax relief for first-time business owners, fulfilling a government pledge made last year.

Simmons stated that any new business owners who register with the Bermuda Economic Development Corporation (BEDC) and meet eligibility criteria will be exempt from the employer portion of payroll tax for themselves, and also for any employees they hire in their first year of business.

The payroll tax relief will apply to Bermudian owned and managed businesses operating locally who are established on or after April 1, 2018, provided their annual gross payroll does not exceed USD500,000 and their annual sales revenue is less than USD1m.

Simmons said that once a small business is established, they will need to register with the BEDC, which, once an assessment and site visit of the business's new location is completed, will issue a "New Entrepreneurs Payroll Tax Relief Letter" within five business days.

ARGENTINA - BRAZIL

Into Force

A Protocol to the Argentina-Brazil DTA signed in 2017 will enter into force on July 29, 2018.

INDIA - ARMENIA

Effective

India's Ministry of Finance published a notification declaring that the Protocol signed on January 27, 2016, amending the country's 2003 DTA with Armenia, had entered into force on June 14, 2017. The notification was published in the Gazette of India on July 5, 2018.

INDONESIA - TIMOR-LESTE

Negotiations

Indonesia and Timor-Leste agreed to launch negotiations towards a DTA on June 28, 2018.

MALDIVES - SINGAPORE

Negotiations

On July 14, 2018, the tax authorities of Maldives and Singapore concluded a first round of negotiations on a prospective DTA between the two countries.

MOROCCO - AZERBAIJAN

Forwarded

A law to ratify the Morocco-Azerbaijan DTA was tabled before Morocco's Cabinet on June 14, 2018.

PORTUGAL - MACAU

Signature

Portugal and Macau signed a DTA Protocol on June 21, 2018.

QATAR - ARGENTINA

Ratified

Qatar's Government on June 14, 2018, confirmed that it had completed its domestic ratification procedures in respect of a DTA signed with Argentina.

SPAIN - UKRAINE

Forwarded

Spain's Council of Ministers on June 29, 2018, approved the signing of a DTA with Ukraine.

UKRAINE - UNITED KINGDOM

Forwarded

Ukraine's Cabinet on June 6, 2018, approved a law to ratify a DTA Protocol signed with the United Kingdom.

UNITED ARAB EMIRATES - VARIOUS

Forwarded

The UAE's Cabinet on June 13, 2018, approved DTAs signed with Saudi Arabia, Rwanda, and Turkmenistan.

UNITED KINGDOM - VARIOUS

Signature

The UK signed DTAs with its Crown Dependencies – Jersey, Guernsey, and the Isle of Man – on July 2, 2018.

A guide to the next few weeks of international tax gab-fests (we're just jealous - stuck in the office).

THE AMERICAS

STEP Global Congress

9/13/2018 - 9/14/2018

STEP

Venue: The Westin Bayshore, 1601 Bayshore Drive, Vancouver, British Columbia, V6G 2VA, Canada

Key speakers: Ivan Sacks (Withersworldwide), Jason Sharman (University of Cambridge), Desmond Teo (EY), Leanne Kaufman (RBC Estate and Trust Services), among numerous others

http://www.stepglobalcongress.com/About-Congress

STEP Wyoming Conference

9/21/2018 - 9/22/2018

STEP

Venue: Four Seasons Resort and Residences, Jackson Hole, 7680 Granite Loop Road, Teton Village, WY 83025, USA

Key speakers: Amy Castoro (The Williams Group), Joseph Field (Pillsbury Winthrop Shaw Pittman LLP), Michael Karlin (Karlin & Peebles LLP), Carl Merino (Day Pitney), among numerous others

https://www.step.org/wyoming-2018

Fiduciary Institute 2018

9/27/2018 - 9/27/2018

American Bar Association

Venue: Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036, USA

Chairs: Joni Andrioff (Steptoe & Johnson), Peter Kelly (Blue Cross and Blue Shield Association)

https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=320379633

STEP LatAm Conference

10/4/2018 - 10/5/2018

STEP

Venue: Hyatt Regency Mexico City, Campos Elíseos 204, Polanco, Polanco Chapultepec, Ciudad de México, 11560, Mexico

Key speakers: Bill Ahern (Ahern Lawyers), Simon Beck (Baker McKenzie), Mauricio Cano del Valle (Brook Y Cano), Ceci Hassan (Baker McKenzie), among numerous others

https://www.step.org/events/step-latam-conference-4th-5th-october

Family Office & Private Wealth Management Forum West

10/24/2018 - 10/26/2018

Opal Group

Venue: Napa Valley Marriott, 3425 Solano Ave, Napa, CA 94558, USA

Key speakers: TBC

http://opalgroup.net/conference/family-office-private-wealth-management-forum-west-2018/

Family Office Summit: Integrating the Full Balance Sheet

11/1/2018 - 11/1/2018

ClearView Financial Media

Venue: The New York Times Building, 37th Floor, 620 Eight Avenue, New York, 10018-1405, USA

Key speakers: TBC

http://clearviewpublishing.com/events/fwr-summit-complete-view-familys-balance-sheet-long-term-investment-lifestyle-management/

TP Minds West Coast

11/13/2018 - 11/15/2018

Informa

Venue: Four Seasons Silicon Valley, 2050 University Ave, East Palo Alto, CA 94303, USA

Key speakers TBC

https://finance.knect365.com/tp-minds-west-coast/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

111th Annual Conference on Taxation

11/15/2018 - 11/17/2018

National Tax Association

Venue: Sheraton New Orleans Hotel, 500 Canal St, New Orleans, LA 70130, USA

Chair: Rosanne Altshuler (National Tax Association)

https://www.ntanet.org/event/2017/12/111th-annual-conference-on-taxation/

8th Annual Institute on Tax, Estate Planning and the World Economy

2/4/2019 - 2/5/2019

STEP

Venue: Fashion Island Hotel, 690 Newport Beach, Newport Beach, 92660, USA

Key speakers: Jay D. Adkisson (Riser Adkisson), Colleen Barney (Albrecht & Barney), Joseph A. Field (Pillsbury), Sandra D. Glazier (Lipson Neilson), among numerous others

http://www.stepoc.org/institute/

ASIA PACIFIC

72nd Congress of the International Fiscal Association

9/2/2018 - 9/6/2018

IBFD

Venue: COEX Convention & Exhibition Center, 513, Yeongdong-daero, Gangnam-gu, Seoul 06164, Republic of Korea

Key speakers: TBC

https://www.ifaseoul2018.com/

TP Minds Asia

9/18/2018 - 9/20/2018

Informa

Venue: Novotel Clarke Quay Singapore, 177A River Valley Rd, Singapore 179031, Singapore

Key speakers: Melinda Brown (OECD), Monique van Herksen (UN Transfer Pricing Subcommittee), Audrey Low (DBS Bank), Gena Cerny (Goldman Sachs), among numerous others

https://finance.knect365.com/tp-minds-asia/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

Practical Aspects of Tax Treaties

10/10/2018 - 10/12/2018

IBFD

Venue: Address TBC after registration, Kuala Lumpur, Malaysia

Instructors: Bart Kosters (IBFD)

https://www.ibfd.org/Training/Practical-Aspects-Tax-Treaties

International Tax Planning after BEPS and the MLI

10/15/2018 - 10/17/2018

IBFD

Venue: Address TBC, Singapore

Key speakers: Bart Kosters (IBFD), Tom Toryanik (Deloitte), Hemal Zobalia (Deloitte Haskin & Sells), among numerous others

https://www.ibfd.org/Training/International-Tax-Planning-after-BEPS-and-MLI

STEP Asia Conference 2018, Hong Kong

11/20/2018 - 11/21/2018

STEP

Venue: Grand Hyatt Hong Kong, 1 Harbor Rd, Wan Chai, Hong Kong

Key speakers: Jonathan Midgley (Haldanes), James Lau (Financial Services and the Treasury Bureau, Hong Kong), among numerous others

https://www.step.org/asia2018

The 4th International Conference on Private Capital and Intergenerational Wealth

11/22/2018 - 11/22/2018

STEP

Venue: The University of Hong Kong, Pokfulam, Hong Kong

Key speakers: TBC

https://www.step.org/events/4th-international-conference-private-capital-and-intergenerational-wealth-22-november-2018

STEP Australia 2019

5/15/2019 - 5/17/2019

STEP

Venue: The Stamford Plaza, Brisbane, Australia

Key speakers: TBC

https://www.step.org/events/step-australia-2019-conference-save-date-15-17-may-2019

CENTRAL AND EASTERN EUROPE

Ukrainian Business Forum Kiev 2018

11/12/2018 - 11/12/2018

CIS Wealth

Venue: Fairmont Grand Hotel Kyiv, 1 Naberezhno-Khreshchatytska Street, Kyiv 04070, Ukraine

Key speakers: TBC

http://cis-wealth.com/en/konferencii/21-ubf2018.html

MIDDLE EAST AND AFRICA

TP Minds Africa

10/31/2018 - 11/2/2018

Informa

Venue: Radisson Blu Hotel Sandton, Rivonia Rd & Daisy St, Sandown, Sandton, 2146, South Africa

Key speakers: Lee Corrick (OECD), Ian Cremer (World Customs Organization), Tanya Bester (MMI Holdings), Mlondie Mohale (Swaziland Revenue Authority), among numerous others

https://finance.knect365.com/tp-minds-africa-transfer-pricing-conference/?_ga=2.241077507.122439778.1526991001-1525335460.1512406535

STEP Arabia Branch Conference

11/11/2018 - 11/11/2018

STEP

Venue: Abu Dhabi Global Markets, Al Maryah Island, Abu Dhabi, UAE

Key speakers: TBC

https://www.step.org/events/step-arabia-branch-conference-11-november-2018-save-date

WESTERN EUROPE

UK Tax, Trusts and Estates Conference 2018

9/4/2018 - 9/4/2018

STEP

Venue: Mercure Manchester Piccadilly Hotel, Portland Street, Manchester, M1 4PH, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell), Lucy Obrey (Higgs & Sons), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/events/uk-tax-trusts-and-estates-conference-2018-manchester-4-september-2018

BEPS Country Implementation – MLI and beyond

9/10/2018 - 9/11/2018

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Instructors: Bart Kosters (IBFD), Tamás Kulcsár (IBFD), Ridha Hamzaoui (IBFD), Luis Nouel (IBFD)

https://www.ibfd.org/Training/BEPS-Country-Implementation-MLI-and-beyond

European Value Added Tax Masterclass

9/20/2018 - 9/21/2018

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD), Jan Snel (Baker & McKenzie), Claus Bohn Jespersen (KPMG)

https://www.ibfd.org/Training/European-Value-Added-Tax-Masterclass

UK Tax, Trusts and Estates Conference 2018

9/21/2018 - 9/21/2018

STEP

Venue: Westminster Park Plaza Hotel, 200 Westminster Bridge Road, Lambeth, London, SE1 7UT, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell), Lucy Obrey (Higgs & Sons), Chris Whitehouse (5 Stone Buildings), among numerous others https://www.step.org/TTE18

International Tax Academy 2018

9/24/2018 - 9/26/2018

Informa

Venue: Downing College, Regent St, Cambridge, CB2 1DQ, UK

Key speakers: Daniel Erasmus (Tax Risk Management), Robert De La Rue (Jardine Motors Group), Jan Weerth (Deutsche Bank), Anne Fairpo (Temple Tax Chambers), among numerous others

https://finance.knect365.com/international-tax-academy/

International Tax Aspects of Permanent Establishments

9/24/2018 - 9/26/2018

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Instructors: Bart Kosters (IBFD), Carlos Gutiérrez Puente (IBFD), Hans Pijl (independent tax lawyer), Jan de Goede (IBFD), among numerous others

https://www.ibfd.org/Training/International-Tax-Aspects-Permanent-Establishments

Private Equity Tax Practices

9/26/2018 - 9/26/2018

Informa

Venue: Address TBC, London, UK

Key speakers: Mary Kuusisto (Proskauer), Mark Baldwin (Macfarlanes), Jenny Wheater (Linklaters), Emily Clark (Travers Smith), among numerous others

https://finance.knect365.com/private-equity-tax-practices/

Private Investor Middle East International Conference

9/26/2018 - 9/27/2018

Adam Smith Conferences

Venue: The Montcalm London Marble Arch, 2 Wallenberg Place, London, W1H 7TN, UK

Key speakers: Jeffrey Sacks (Citi Private Bank), Michael Addison (UBS), Paul Stibbard (Rothschild Trust), Ian Barnard (Capital Generation Partners), among numerous others

http://www.privateinvestormiddleeast.com/

Wealth Insight Forum 2018

9/27/2018 - 9/27/2018

Spear's

Venue: One Great George Street, 1 Great George St, Westminster, London, SW1P 3AA, UK

Key speakers: Trevor Abrahmsohn (Glentree International), Robert Amsterdam (Amsterdam & Partners), Stephen Bush (New

Statesman), Mark Davies (Mark Davies & Associates), among numerous others

http://wif.spearswms.com/

Principles of Transfer Pricing

10/1/2018 - 10/5/2018

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Instructors: TBC

https://www.ibfd.org/Training/Principles-Transfer-Pricing-2

UK Tax, Trusts and Estates Conference 2018

10/2/2018 - 10/2/2018

STEP

Venue: The Principal York, Station Road, York, YO24 1AA, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell), Lucy Obrey (Higgs & Sons), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/TTE18

STEP Europe Conference

10/4/2018 - 10/5/2018

STEP

Venue: Hôtel Le Royal, 12 Boulevard Royal, 2449 Luxembourg, Luxembourg

Key speakers: John Marshall (British Ambassador to Luxembourg), Miguel Poiares Maduro (European University Institute, Italy), Serge Schroeder (Cour Administrative, Luxembourg), Judge Christopher Vajda (Court of Justice of the European Union), among numerous others

https://www.step.org/europe18

European Value Added Tax – Selected Issues

10/10/2018 - 10/12/2018

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Instructors: Fabiola Annacondia (IBFD), Jordi Sol (IBFD)

https://www.ibfd.org/Training/European-Value-Added-Tax-Selected-Issues-2

9th Annual International Taxation in CEE

10/11/2018 - 10/12/2018

GCM Parker

Venue: Address TBC, Prague, Czech Republic

Key speakers: TBC

http://gcmparker.com/gcm-conference-listing?menuid=0&conferenceid=77

UK Tax, Trusts and Estates Conference 2018

10/16/2018 - 10/16/2018

STEP

Venue: Bristol Marriott Royal Hotel, College Green, Bristol, BS1 5TA, UK

Key speakers: Julia Abrey (Withers LLP), John Bunker (Irwin Mitchell Private Wealth), Christopher Groves (Withers LLP), Chris Whitehouse (5 Stone Buildings), among numerous others

https://www.step.org/events/uk-tax-trusts-and-estates-conference-2018-bristol-16-october-2018

International Tax Planning Association Meeting

10/17/2018 - 10/19/2018

ITPA

Venue: Mandarin Oriental Hyde Park, 66 Knightsbridge, London, SW1X 7LA, UK

Chairs: Milton Grundy (Grays Inn Tax Chambers), Paolo Panico (Private Trustees)

https://www.itpa.org/meeting/london/

Current Issues in International Tax Planning

10/22/2018 - 10/24/2018

IBFD

Venue: IBFD head office, Rietlandpark 301, 1019 DW Amsterdam, The Netherlands

Key speakers: Annemiek Kale (Arla Foods), Adam Zalasinski (European Commission), Tamás Kulcsár (IBFD), Jeroen Kuppens (KPMG Meijburg & Co), among numerous others

https://www.ibfd.org/Training/Current-Issues-International-Tax-Planning-0

Annual Conference on European VAT Law 2018

11/22/2018 - 11/23/2018

Academy of European Law

Venue: TBC, Trier, Germany

Key speakers: TBC

https://www.era.int/cgi-bin/cms?_SID=9e33bf77b0e4587e14991159621fbca4524365720059422613889 3&_sprache=en&_bereich=artikel&_aktion=detail&idartikel=127489&idrubrik=1024

Capital Taxes Update

12/5/2018 - 12/5/2018

STEP

Venue: Holiday Inn, Impington, Lakeview, Bridge Rd, Impington, Cambridge, CB24 9PH, UK

Key speaker: Chris Whitehouse (5 Stone Buildings)

https://www.step.org/events/capital-taxes-update-5-december-2018

THE AMERICAS

Canada

A listing of recent key international tax cases.

In a landmark judgment, Canada's Tax Court has ruled that the fees paid by Canadian Imperial Bank of Commerce (CIBC) for the credit payment processing services rendered by Visa to the bank's customers should be subject to goods and services tax (GST), rather than being classified as a financial service exempt from tax.

The bank had sought to reclaim GST that it had paid to Visa for the services.

It was argued that although Visa offered payment processing services, Visa was able to have such transactions on credit accepted by retailers because of its brand strength and reliability and such was a fundamental part of the supply. Further, it was said that the financial services were in fact rendered by CIBC, rather than Visa; Visa's services were intended to support the administration of such instead. The Court said Visa's supplies were "of a payment platform and facilitating payments on that platform."

More broadly, the Court summarized that the fees paid by CIBC to Visa were for:

- Transaction processing, involving the routing of payment information and related data to facilitate the authorization and settlement of transactions between issuers, acquirers, and merchants;
- Licensing of the Visa brand;
- Payment network management, including maintenance of the Visa network, data processing, rule making, and adjudication; and
- Brand management and promotion.

Although some aspects of the services rendered were said to fall within some categories of exempt financial services, that the service was deemed administrative in nature meant that it was excluded from the definition.

The Court said:

> "The value added service which Visa provides to CIBC is to relieve them of the need to keep track of and then individually pay merchants for the transactions paid for on credit by CIBC clients. Instead, Visa gives CIBC the ability to offer its clients the option of paying for goods and services on credit while only needing to make one lump sum payment to Visa at the end of every day to settle the transactions undertaken by these clients. At its most basic level then, the benefit that Visa offered CIBC was cost saving and logistical simplification. Both of which, like in [*Great-West Life Assurance Co. v. R.*, 2016 FCA 316], are quintessentially administrative in nature."

The Canadian authorities here successfully argued that, considering the objective factors, such as the complexity of maintaining the Visa network, the speed at which the Visa Net system was able to clear and settle transactions, and the huge sums of money spent by Visa on advertising, marketing, and promotional services, as well as the high value of the Visa brand name, it should be concluded that the electronic transfer of money was not the predominant element of the supply and that the supply instead had multiple predominant elements such as right to use the Visa brand name, data transmission services, and the right to access Visa's proprietary network.

The Court concluded that the fees and services are in respect of a taxable supply for GST purposes and are not exempt from GST.

https://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/item/311772/index.do?r=AAAAAQAHVENDIDEwOQE

Tax Court of Canada: *Canadian Imperial Bank of Commerce v. The Queen, 2018 TCC 109 (CanLII)*

United States

In a landmark decision on June 21, the US Supreme Court overturned existing case law by ruling that a state can collect sales tax on remote sales even when the vendor does not have a physical presence in the state.

The highly anticipated decision reverses the Supreme Court's pre-internet *Quill* decision of 1992, which held that states cannot force sales tax collection obligation on vendors who do not have personnel or property in the state (the "physical presence" standard).

The case, *South Dakota v. Wayfair, Inc.*, required the Court to determine when an out-of-state seller can be required to collect and remit state sales tax. In so doing, it examined the constitutionality of a South Dakota sales tax law that requires collection of the state's sales tax by internet vendors with at least 200 transactions or USD100,000 in sales to South Dakota residents.

The Supreme Court judges agreed that the South Dakota sales tax law is lawful and discussed whether an out-of-state seller can be held responsible for the payment of sales tax under the Commerce Clause of the US Constitution, which was designed to prevent states from engaging in economic discrimination.

In its five-to-four majority decision, the Court observed that physical presence "is not necessary to create a substantial nexus." It also said that it is no longer possible to defend the physical presence requirement from the point of view that its removal would create undue administrative burdens on out-of-state vendors and disrupt inter-state commerce, given the technology that makes remote online sales possible.

The judgment states:

> "The *Quill* majority expressed concern that without the physical presence rule 'a state tax might unduly burden interstate commerce' by subjecting retailers to tax collection obligations in thousands of different taxing jurisdictions. But the administrative costs of compliance, especially in the modern economy with its internet technology, are largely unrelated to whether a company happens to have a physical presence in a state. For example, a business with one salesperson in each state must collect sales taxes in every jurisdiction in which goods are delivered; but a business with 500 salespersons in one central location and a website accessible in every state need not collect sales taxes on otherwise identical nationwide sales. In other words, under *Quill*, a small company with diverse physical presence might be equally or more burdened by compliance costs than a large remote seller."

The Court considered that the physical presence rule "is a poor proxy for the compliance costs faced by companies that do business in multiple states," and that existing case law has provided remote sellers with an unfair tax and regulatory advantage. It went on to observe:

> "In effect, *Quill* has come to serve as a judicially created tax shelter for businesses that decide to limit their physical presence and still sell their goods and services to a state's

> consumers – something that has become easier and more prevalent as technology has advanced.
>
> Worse still, the rule produces an incentive to avoid physical presence in multiple states."

The Court concluded:

> "The Commerce Clause must not prefer interstate commerce only to the point where a merchant physically crosses state borders. Rejecting the physical presence rule is necessary to ensure that artificial competitive advantages are not created by this Court's precedents. This Court should not prevent states from collecting lawful taxes through a physical presence rule that can be satisfied only if there is an employee or a building in the state."

However, the Court maintained that the existing principles underpinning the legality of a tax continues to stand, including that it applies to an activity with a substantial nexus with the taxing state; is fairly apportioned; does not discriminate against interstate commerce; and is fairly related to the services the state provides.

The Court said the South Dakota tax law under examination – S.B. 106 – satisfies these tests.

The ruling is likely to be welcomed by state governments, who have argued that the *de facto* sales tax exemption on items bought online deprives them of a vital source of tax revenue. Several states have already introduced laws extending their sales and use taxes to remote sales, although many have been forced to defend these measures in the courts. However, the Supreme Court's latest decision is expected to clear the way for other states to follow in South Dakota's footsteps.

The decision will also be applauded by "brick-and-mortar" retailers, who have long argued that existing sales tax rules have given online vendors an unfair and significant competitive advantage in the marketplace. It will involve substantial new tax obligations for online retailers.

https://www.supremecourt.gov/opinions/17pdf/17-494_j4el.pdf

Supreme Court of the United States: *South Dakota v. Wayfair, Inc.*

Denmark

The European Court of Justice (ECJ) has ruled against Danish legislation that grants undertakings for collective investment in transferable securities (UCITS) established in Denmark an exemption from tax at source on dividends distributed by Danish companies, while such is not available to UCITS established in other member states.

UCITS situated outside Denmark received dividends from companies in Denmark and that income was subject to Danish withholding tax on dividend income.

However, equivalent transfers to UCITS in Denmark are exempt under the contested provisions, providing certain rules are satisfied. These provisions were challenged by firms that established UCITS in the UK and Luxembourg, which argued that they too should benefit from the same dividend income exemption as enjoyed by UCITS in Denmark.

The ECJ ruled for the fund administrators and against the Danish provisions, stating:

> "Article 56 EC (now Article 63 TFEU) must be interpreted as precluding a member state's tax regime, such as that at issue in the main proceedings, under which UCITS in that member state can obtain an exemption from tax at source on the dividends they receive from resident companies, either because they in fact make a minimum distribution to their members on which tax at source is retained, or because technically a minimum distribution is calculated on the basis of which tax at source is retained in the hands of their members, while non-resident UCITS of the same kind are taxed at source on the dividends distributed by resident companies."

http://curia.europa.eu/juris/document/document.jsf?text=&docid=203226&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=861066

European Court of Justice: *Fidelity Funds v. Skatteministeriet (Case C-480/16)*

Latvia

The European Court of Justice has ruled that pawned goods, forfeited by a pawn shop's debtors, that are sold to another taxable person for their intrinsic value and not for resale should not be subject to the EU VAT Directive's special rules for second-hand goods and should instead be taxable under general VAT rules.

The court was asked in what circumstances goods including precious metals or precious stones are no longer "second-hand goods" and are instead a supply of those materials, which are excluded from the EU's profit-margin scheme for second-hand goods.

Under the profit-margin scheme, instead of VAT being calculated based on the sales price, the VAT due is calculated based on the difference between the purchase and sales price of the goods. This is intended to avoid double taxation, as a dealer selling a second-hand good, acquired from a consumer, to another trader would not be able to recover the VAT embedded in its value.

Precious metals or precious stones are excluded from the notion of second-hand goods, and, by the same token, from the derogating profit-margin scheme. As a result, such supplies are instead subject to the general VAT regime.

In the case before the court, E LATS, a taxable person, offered loans to individuals, who were not liable to pay VAT. As collateral for the loan, it would accept goods containing precious metals or precious stones, such as chains, pendants, rings, wedding rings, spoons, and dental material. Where a debtor failed to repay the amount, the pawned goods were sold to other VAT-registered traders.

E LATS sought to apply the profit-margin scheme to the onward supplies, as supplies of second-hand goods. However, the Latvian tax agency disagreed and said that the goods should be excluded from the profit-margin scheme.

The company appealed against the assessment and the case was heard by the Latvian Supreme Court, which referred questions to the European Court of Justice.

The relevant provision of EU VAT law is Article 311(1)(1) of the EU VAT Directive, which provides for the treatment and classification of second-hand goods and sets out the exclusions, including for precious metals and precious stones. "Second-hand goods" are defined as "movable tangible property that is suitable for further use as it is or after repair, other than works of art, collectors' items or antiques, and other than precious metals or precious stones as defined by the Member States."

The ECJ noted that Article 311(1)(1) of the VAT Directive expressly mentions actual precious metals and precious stones, but it makes no express reference to items containing precious metals or precious stones that are suitable for "further use."

The ECJ said: "in order for an object composed of precious metals or precious stones to be capable of falling within the category of 'second-hand goods,' within the meaning of Article 311(1)(1) of the VAT Directive, which are eligible for the special margin scheme, and not that of 'precious metals or precious stones,' which are excluded from that scheme, it must have had a functionality other than that which is inherent in the materials of which it is composed, have retained that functionality, and be suitable for further use, as it is, or after repair."

"By contrast," the ECJ continued, referencing an earlier ECJ Advocate General opinion, "where an object has no functionality other than that inherent in its component materials, or is not capable of fulfilling any other function, the object in question does not qualify for the special margin scheme since it is no longer in the same economic cycle and will be useful only for the purposes of being transformed into a new object, which will have a new economic cycle, with the result that the risk of double taxation, which is the basis for the establishment of the margin scheme, disappears."

"The factors which must be taken into account in order to establish, in a particular case, whether a resold item falls within the category of 'second-hand goods' or that of 'precious metals and precious stones' include all the objective circumstances in which the resale has taken place. [...] factors such as the presentation of the items in question, the method of valuing them and the method of charging, namely in bulk (gross/weight) or per item, are objective factors that may legitimately be taken into consideration." The ECJ advised the Supreme Court that the taxable dealers' records and connected invoices may provide objective information to make a determination.

The ECJ concluded by ruling that: "Article 311(1)(1) of the EU VAT Directive must be interpreted as meaning that the concept of 'second-hand goods' does not cover used goods containing precious metals or precious stones if those goods are no longer capable of performing their initial function and have retained only the functionalities inherent in those metals and stones, which is for the national court to determine taking into account all the objective circumstances relevant in each individual case."

http://curia.europa.eu/juris/document/document.jsf?text=&docid=203905&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=165510

European Court of Justice: *Case C-154/17*

Netherlands

The Dutch Government has published a summary of its arguments put forward in the General Court of the European Union to support its appeal against the European Commission's decision in the Starbucks state aid case.

Following an investigation, the Commission decided in October 2015 that an advanced tax ruling provided to Starbucks by the Netherlands does not reflect economic reality and grants a selective advantage to Starbucks in breach of EU law.

In its non-confidential version of the decision, published in June 2016, the Commission said: "Starbucks Manufacturing pays a very substantial royalty to Alki (a UK-based company in the Starbucks group) for coffee-roasting know-how [and] it also pays an inflated price for green coffee beans to Switzerland-based Starbucks Coffee Trading SARL," noting the margin on these beans had more than tripled since 2011.

The Commission concluded that its investigation "established that the royalty paid by Starbucks Manufacturing to Alki cannot be justified as it does not adequately reflect market value. In fact, only Starbucks Manufacturing is required to pay for using this know-how – no other Starbucks group company nor independent roasters to which roasting is outsourced are required to pay a royalty for using the same know-how in essentially the same situation … the existence and level of the royalty means that a large part of its taxable profits are unduly shifted to Alki, which is neither liable to pay corporate tax in the UK, nor in the Netherlands."

Disagreeing with the Commission's conclusions, the Dutch Government subsequently appealed, and a hearing took place before the General Court on July 2, 2018.

According to the Dutch Government's summary of its arguments, the outcome of the case revolved around the method used to calculate the taxable profit in the Netherlands of Starbucks Manufacturing BV, and whether this resulted in the correct amount of taxable profit.

The Netherlands' position in the case is based on three arguments:

- That the Commission failed to carry out an analysis based on the arm's length principle under Dutch tax law;
- That the profit determination in the ruling is at arm's length; and
- That the intercompany transactions that the Commission said should have been assessed are not relevant for determining the arm's length profit of Starbucks Manufacturing.

With regards to the first argument, the Government stated:

> "To determine whether or not there is a state aid must be determined on the basis of national law. After all, member states are autonomous with regard to direct taxation. With its analysis, the European Commission is taking it upon itself to impose its own interpretation of the arm's length principle on member states. However, there is no basis for this in Article 107 of the Treaty."

On the issue of whether the profit determination was at arm's length, the Government said:

> "Starbucks Manufacturing BV is a coffee roaster and logistics and administrative service provider in the Netherlands, which performs simple, routine activities. Under Dutch law, an arm's length profit should be determined in case of transactions with affiliated companies. This arm's length profit is determined on the basis of the rules set out in the law and in the Dutch Transfer Pricing Decree. Because of the relatively simple functions it performs, Starbucks Manufacturing BV should receive a remuneration for its routine activities. To determine this remuneration, Starbucks Manufacturing BV has been compared with 20 independent coffee roasters. These coffee roasters were selected because they are very similar to Starbucks Manufacturing BV. The 20 coffee roasters realize a net profit margin that is similar to the remuneration agreed upon in the ruling."

On the matter of the relevance of the transactions highlighted by the Commission, the summary concluded:

> "A part of the income that is earned by Starbucks Manufacturing BV is attributable to functions performed by Starbucks US in the United States. In the United States, these monies are then taxed at a 35 percent rate. The state is of the opinion that this cash flow has no consequences for the business profit of Starbucks Manufacturing BV."

The Netherlands expects the court to deliver its judgment within the next few months. It said that judgments by the General Court of the European Union can be appealed before the European Court of Justice.

https://www.government.nl/latest/news/2018/07/02/point-of-view-of-the-netherland-at-the-general-court-of-the-european-union-on-starbucks

General Court of the European Union: *Hearing On July 2, 2018 On Starbucks Manufacturing BV*

Dateline July 19, 2018

Given that most taxpayers can connect to the internet using one device or another, the announcement by the **South African Revenue Service** that it is withdrawing access to, and delivery facilities for, some paper forms to encourage higher rates of e-filing might not be too bad of an idea. Indeed, considering what's been going on at SARS recently, it's probably a good thing all round that human intervention is being removed from the tax collection process.

Smaller, electronic tax forms seems to be the way the world is going. Last week, I praised the **United States Internal Revenue Service** for releasing a substantially-truncated version of the main personal federal income tax form, which should hopefully make tax time a slightly less harrowing experience for many. Yet, this week, I might well have to rescind that after the American Institute of Certified Public Accountants urged the IRS to rethink the contents of the new version of Form W-4. The original purpose of this form was to provide employers with basic information to enable an employee's taxes to be withheld appropriately. But, as the AICPA pointed out, W-4 has grown into something of a monster.

Maybe the takeaway here is that we'll always experience a **certain tension between simplification and complication in taxation.** As tax authorities seek more and more information about us in order to enforce laws passed by their political masters, the same political masters are passing tax reforms instructing authorities to make life easier for taxpayers. It's kind of a yin and yang balance, or like surfing the line between order and chaos. Unfortunately, though, taxpayers continue to experience tax wipe-outs.

Chaos must also be an appropriate word to describe the present state of **carbon taxation in Canada**. On the one hand, we've had various carbon taxes and pricing schemes springing up at provincial level across the country, and on the other, we've now got federal legislation in place to compel those provinces that don't yet have carbon pricing in place to adopt one of two preferred systems. However – and we've already run out of hands now – businesses must also contend with the **possibility that schemes in certain provinces will be rescinded** after local political changes, such as in Ontario.

It's difficult to know what's going to happen next here. Maybe Canada will end up going the way of Australia, and vote in a government that scraps carbon pricing altogether. That would seem a bit of a stretch at the moment perhaps, with the Liberal Government committed to the Paris Agreement, and few signs of a policy u-turn coming down the road. However we've almost come to expect that few things can be ruled out in this unpredictable world of ours. It's enough to make the brain fire on all cylinders. So much so that you might end up blowing a gasket and spewing out carbon-rich fumes from the ears.

Moving on (rapidly as it turns out), and the main focus of national and international tax policy makers at present is on the highly mobile, hare-like nature of **business income**, which whizzes from one jurisdiction to another at lightening speed, leaving tortoise-esque tax regimes trailing in its wake. But let's not forgot that in today's global economy, people are highly mobile too, as major advances in transport and communications technology have enabled individuals to live and work in all corners of the world and stay in touch with their work and family base with relative ease.

However, personal income tax codes, specifically in relation to **rules on residency**, have by and large also failed to catch up with the often-peripatetic nature of modern life. Indeed, some of these laws are so ancient, I'm sure Homer would still recognize them. Although the bit in The Odyssey about how Odysseus had to fill in numerous tax returns on his epic journey home was edited out of the final version. Understandably.

A major issue seems to be that once you've lived in a certain country for a certain amount of time, **tax residency starts to stick**, and in certain circumstances it becomes very difficult to shake off. At the same time, the land of one's birth may also want a piece of the action. I'm sure most of the approximately 9m US expats living overseas are familiar with this issue, or the numerous "accidental Americans" facing tax demands from the IRS despite having the most tenuous links with America. The **United Kingdom** also has the ability to make life difficult for former residents with its venerable domicile rules. And attempts to clear things up with a residency test don't look to have entirely succeeded, either, so tangled is this web.

Tax, therefore, remains dangerous territory for people with internationally-mobile 21st century lifestyles, as well as fertile territory for litigators, with taxpayers often looking to the courts for answers. It is to be hoped, therefore, that **Australia** makes a better fist of things as it seeks to reform outdated tax residence laws which have remained largely untouched since the 1930s.

Finally, and on a related theme, I simply can't allow the **Netherlands** to escape scrutiny over its proposals for a **new tax on the aviation sector**. Especially as one of the proposals included in the recently-launched public consultation on the matter is for a per-passenger flight tax. Far from unusually, this has been dressed up in the virtuous cloak of an environmental tax measure; basic math tells us that it's anything but.

Imagine if a 747 en route from Amsterdam to New York had just one passenger. Not only would that passenger be the luckiest flyer in the sky, an awful lot of aviation fuel would be consumed to get him from A to B, and lucky Jim's carbon footprint would as a consequence be enormous. Jumbo-sized, you could say. Yet the tax paid for this extravagant flight would be negligible. Now imagine the next flight from Schiphol to JKF was full. This flight would be taxed heavily, yet the level of carbon emitted per passenger could be three or four hundred times lower. In other words, the profligate use of carbon-emitting fuel is rewarded, and efficiency is punished. Indeed, the airline should just leave lucky Jim at the gate and fly the plane empty.

The Jester